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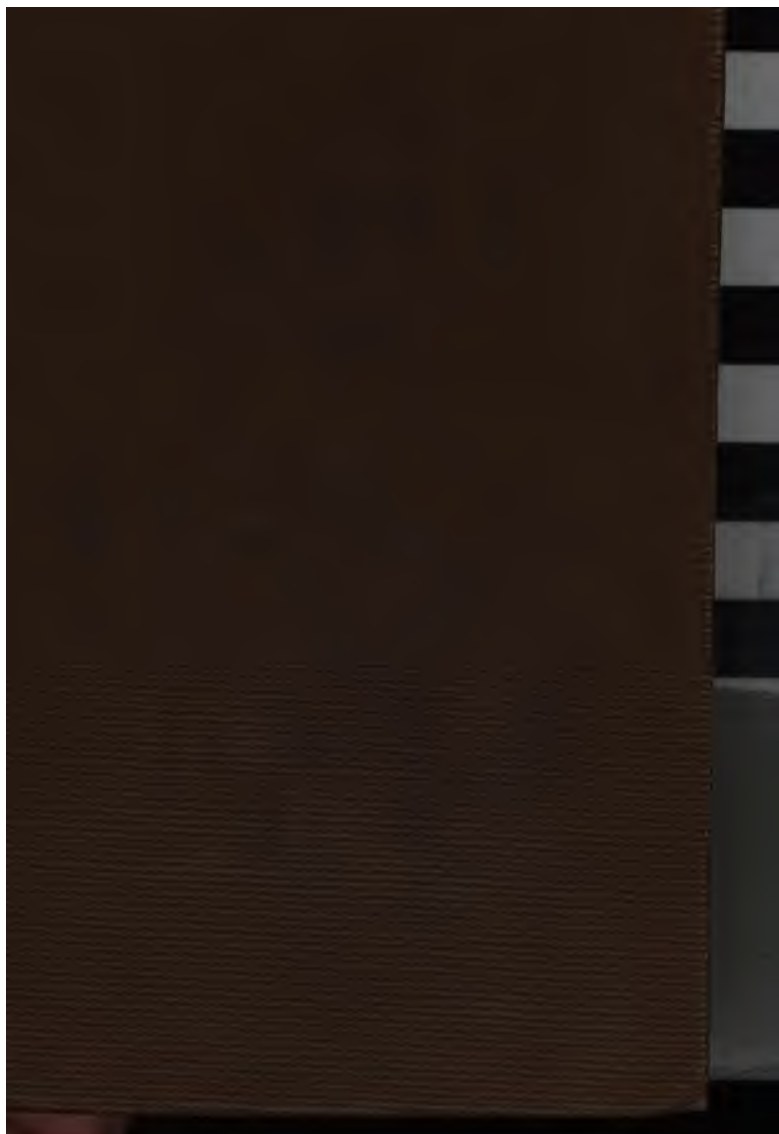
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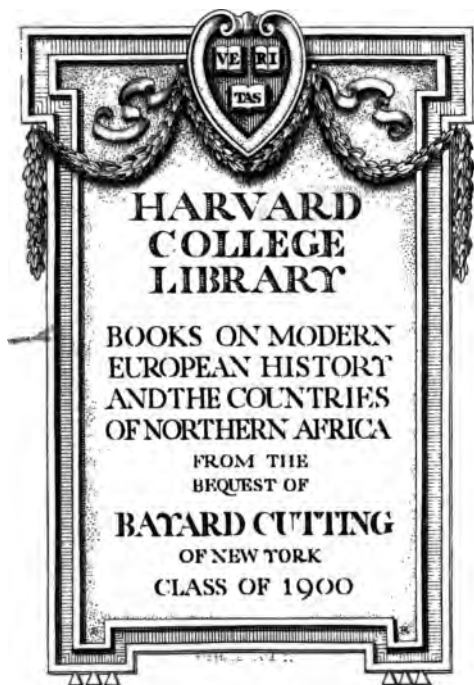
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# **CONSTITUTION**

OF THE

## **STATE OF CALIFORNIA -**

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ANNOTATED BY  
**W. F. HENNING, Esq.**  
- OF THE -  
**LOS ANGELES BAR**

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*Containing besides the Annotated Constitutions of  
1849 and 1879.*

**Constitution of the United States (with Index).  
Treaty of Guadalupe Hidalgo.  
List of Members of Constitutional Conventions.**

SECOND EDITION.

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## INTRODUCTION.

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The first constitution of California was adopted in convention chosen by the people under proclamation issued by Brevet Brig. General B. Riley, U. S. A., then in command of the United States forces, and *ex officio* civil governor, by virtue of the laws of Mexico then in force here, and by which the military officer in command became governor in the absence of a duly elected civil governor. The election for members of the convention was held August 1st, 1849; the convention met at Monterey on the 1st of September following, and on the 10th of October of the same year, the constitution was adopted in convention. It was ratified by the people on the 13th of November, and proclaimed on the 20th of December, 1849.

The first amendment was proposed by the legislature in 1855, and ratified November 4th, 1856. This amendment altered the mode in which the constitution might be revised or entirely changed, and provided that the constitution that should be agreed upon by a convention called for such purpose should thereafter be submitted to the people; and provided also for the canvass of the vote cast, and for proclamation thereof by the governor, which provisions were not in the constitution as originally adopted. No other amendments were made until those proposed in 1861, and which were

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ratified September 3d, 1862. These amendments changed the sessions of the legislature from annual to biennial, and of course changed the term of office of the members of the house from one to two years, and of senators from two to four years. The terms of governor, secretary of state and superintendent of public instruction were changed from two to four years, and the judicial department was changed in very material respects.

The next amendment was that ratified September 6th, 1871, by which section 22 was added to article I, limiting appropriations to two years.

The present constitution was adopted in convention at Sacramento, March 3d, 1879; was ratified by vote of the people May 7th, 1879, and went into effect, according to its own terms, at 12 o'clock, M., July 4th, 1879, so far as the same relates to the election of all officers, the commencement of their terms, and the sessions of the legislature. In all other respects and for all other purposes, it took effect on the first day of January, 1880, at 12 o'clock, M.

The amendments to this constitution have been five, as follows: Section 19, article XI, and section 9, article XIII, ratified at election held November 5th, 1881; section 8, article XI, ratified at election held April 12th, 1887; and sections 8 and 18, article XI, ratified at election held November 8th, 1892.

It will be seen by reference to *Davis v. Superior Court*, 63 Cal. 581, and *Staude v. Election Commissioners*, 61 Cal. 313, *People v. O'Brien*, 96 Cal. 171, that the present Supreme Court will follow, as authoritative, the construction placed upon any provision of the former constitution by the former Su-

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*prima Court.* There are many of the provisions of the old constitution embodied in the new, which are noted in this volume by appropriate reference under the respective sections of the latter; and in view of the familiar rule expressed in *Knowles v. Yates*, 31 Cal. 83, approved in *S. & C. R. R. Co. v. Galgiani*, 49 Cal. 139, and *Hyatt v. Allen*, 54 Cal. 353, *Ex parte Ahren*, 103 Cal. 414 to the effect that prior and recent judicial interpretation of provisions inserted in a constitution will be presumed to have been considered by the people in adopting such provisions, the importance of inserting in this volume the old constitution with its annotations is very manifest. Again, the codes were not abolished by the new constitution, and it is said in *Wickersham v. Brittan*, 93 Cal. 33, 40, that the effect of section 1, article XXII, "was, by a single comprehensive provision to preserve the statutory procedure that was then existing with reference to the courts which were by that instrument abolished, and to authorize that procedure in all rights of action that were to be determined under the new constitution."

Radical changes were effected by the constitution of 1879 in regard to the judicial and legislative departments and in the matters of municipal corporations and taxation, and these changes have resulted in such a volume of decisions by the Supreme Court of this state, the whole being so interwoven with the general policy of the state, that it is believed that to cite decisions from other states upon similar constitutional provisions would be largely a work of supererogation at the present time. That there is occasion for the present effort to bring together

## CONSTITUTION

in this form the decisions of the Supreme Court this state is manifest by the encouragement that have received in various ways since its intended publication has become known.

W. F. H.

LOS ANGELES, CAL., October 15, 1894.

## INTRODUCTION TO SECOND EDITION

The sale of this work has exceeded the expectations of the publisher and a second edition has become necessary. This edition brings the annotations to the California Constitution down to date.

I deem it proper to express my gratification the favor with which my first labor has been received.

Since the first edition the following constitutional amendments have been adopted.

Section 17, article I, amendment adopted November 6, 1894. Section 1, article II, amendment adopted November 6, 1894. Section 5, article I amendment adopted November 3, 1896. Section article IX, amendment adopted November 6, 1896. Section 3, article XI, amendment adopted November 6, 1894. Section 6, article XI, amendment adopted November 3, 1896. Section 7, article X amendment adopted November 6, 1894. Section 8 article XI, added November 3, 1896. Section article XIII, amendment adopted November 6, 1896. Section 12½, article XIII, added November 6, 1896.

W. F. H.

LOS ANGELES, CAL., December 15, 1898.

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Chas. de Lough.

CONSTITUTION  
ON THE  
STATE OF CALIFORNIA

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*Adopted in Convention, at Sacramento, March 3rd,  
A. D. 1879; Ratified by a vote of the People,  
Wednesday, May 7th, 1879.*

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PREAMBLE AND DECLARATION OF RIGHTS.

PREAMBLE.

We, the people of the state of California, grateful to Almighty God for our freedom, in order to secure and perpetuate its blessings, do establish this Constitution.

Const. 1849.

Each provision of the constitution is to be given its proper effect. If in one section a power is specially conferred, or a duty specially enjoined, which, in general terms, is prohibited by other sections, the power or duty specially conferred or enjoined constitutes an exception to the general rule; the direction to employ the power or discharge the duty in the particular instance is as mandatory as the general prohibition. S. F. & N. P. R. R. Co. v. State Board, 60 Cal. 32.

The general rules of construction are the same whether applied to constitutions or statutes, and it is a familiar rule of construction not to treat any word as redundant, if that can be avoided without marring the obvious sense of the entire clause. *Hyatt v. Allen*, 54 Cal. 353.

## ARTICLE I.

### DECLARATION OF RIGHTS.

SECTION 1. All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting property, and pursuing and obtaining safety and happiness.

Const. 1849, Art. I, Sec. 1.

Unusual and burdensome restrictions imposed by ordinance of supervisors of San Mateo county upon the business of maintaining an asylum for treatment of insane and others, render the ordinance unconstitutional. *Ex parte Whitwell*, 98 Cal. 73.

A city ordinance prohibiting the sale of liquor in any saloon, dance house, etc., where females are employed to solicit or wait upon customers is a valid exercise of police power and not an unconstitutional discrimination. *Ex parte Hayes*, 98 Cal. 555.

So, an ordinance requiring a license of thirty dollars for ordinary saloons or bars, and a license of one hundred and fifty dollars where females are employed, is held constitutional. *Ex parte Felchlin*, 96 Cal. 360.

Under section 1617, Political Code, there is no authority for excluding children of African descent from public schools attended by white children, nor for establishing separate schools for Africans or Indians. The case of *Ward v. Flood*, 48 Cal. 37, is distinguished for the reason that at that time the statutes of the state provided for such separate schools. Suggested further that there is nothing in the constitution of this state, nor in the 13th and 14th amendments to the constitution of the United States, inhibiting legislation providing for such separate schools. *Wysinger v. Crookshank*, 82 Cal. 588.

Any person is at liberty to pursue any lawful calling, and to do so in his own way, not encroaching upon the rights of others; and it is not competent to forbid any person or class of persons, whether citizens or alien residents, from engaging in such business, or to subject others to penalties for employing them. An ordinance of the city of Los Angeles making it a misdemeanor for any contractor to employ any person to work more than eight hours a day, or to employ Chinese labor on work contracted for by the city, is a direct interference with the rights of individuals, and unconstitutional so far as it attempts to create a criminal offense, it not appearing that the work to be performed was unlawful or against public policy, or that the employment was such as might be unfit for infants, females or the like, or forbidden on that ground. *Ex parte Kuback*, 85 Cal. 274.

An ordinance of the city and county of San Francisco prohibiting the carrying on of any laundry within certain named limits without first obtaining a certificate from the health officer that the premises are sufficiently drained, and that the business can be carried on without danger to the sanitary condition of the neighborhood, and a certificate from the fire wardens that the heating appliances are in safe condition, and that no persons owning or employed in said wash houses shall wash or iron clothes between the hours of ten o'clock P. M. and six o'clock A. M., nor on Sunday. *Held*, the ordinance was not unconstitutional. *Ex parte* Moynier, 65 Cal. 33.

An ordinance of supervisors establishing a license of twenty-five dollars per month upon business of retailing spirituous liquors is not in restraint of trade nor oppressive. *Ex parte* Benninger, 64 Cal. 291.

The Sunday law contained in sections 300, 301 of Penal Code, as those sections existed in 1881, is not unconstitutional. *Ex parte* Koser, 60 Cal. 177.

The provisions of section 397 of Penal Code prohibiting the sale of intoxicating liquors to Indians is not obnoxious to the constitutional provisions guaranteeing the fundamental rights of persons. *People v. Bray*, 105 Cal. 345.

A municipal ordinance which declared that it was unlawful for any one to have in possession any lottery ticket unless such person *should show* that the possession thereof was

innocent, or for some lawful purpose, is subversive of constitutional right, in so far as it takes away the presumption of innocence. *In re Wong Hane*, 108 Cal. 682.

This section is referred to in discussing section 310½ of the Penal Code, as enacted in 1895 [Stats. p. 247, Palm Ed.], requiring barber shops to be closed on Sundays and holidays after 12 o'clock m. in *Ex parte Jentzsch*, 112 Cal. 470. See cases collected under section 3, article XIX, and sections 17, 18, article XX.

SECTION 2. All political power is inherent in the people. Government is instituted for the protection, security and benefit of the people, and they have the right to alter or reform the same whenever the public good may require it.

Const. 1849, Art. I, Sec. 2.

For the purposes of government, the protection, security and benefit of the people, municipal and *quasi* municipal corporations may be created, and the legislature may pass general laws which, from their nature, will be capable of enforcement in only particular portions of the state. *In re Madera Ir. Dist.*, 92 Cal. 316.

This section is referred to in *Currey v. Miller*, 113 Cal. 645, in connection with the fee bill of 1895, where said act is held applicable to San Francisco.

SECTION 3. The state of California is an inseparable part of the American Union, and the constitution of the United States is the supreme law of the land.

As to federal jurisdiction within the territorial limits of the state, see *People v. Collins*, 105 Cal. 508.

SECTION 4. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be guaranteed in this state; and no person shall be rendered incompetent to be a witness or juror on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.

Const. 1849, Art. I, Sec. 4.

The court is not justified in pronouncing any form of religious belief superstitious or contrary to public policy, when not followed by acts which are recognized as hurtful to society. So held with reference to certain religious views regarding the spirits of the dead and their communication with the living. (Spiritualism.) *Newman v. Smith*, 77 Cal. 23.

The Sunday Law, contained in sections 300-301 Penal Code, as they existed in 1881, is not unconstitutional. *Ex parte Koser*, 60 Cal. 177, and *Ex parte Burke*, 59 Cal. 6.

The provisions of section 397 of the Penal Code, prohibiting the sale of intoxicating liquors to Indians, does not contravene the fundamental principles of liberty. *People v. Bray*, 105 Cal. 345.

SECTION 5. The privilege of the writ of *habeas corpus* shall not be suspended unless when, in cases of rebellion or invasion, the public safety may require its suspension.

Const. 1849, Art. I, Sec. 5.

SECTION 6. All persons shall be bailable by sufficient sureties, unless for capital offenses when the proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed; nor shall cruel or unusual punishments be inflicted. Witnesses shall not be unreasonably detained, nor confined in any room where criminals are actually imprisoned.

Const. 1849, Art. I, Secs. 5 and 6.

A person charged with any offense not punishable with death is entitled, before conviction, to be admitted to bail, as a matter of right, but a defendant charged with an offense punishable with death cannot be admitted to bail, when the proof of his guilt is evident or the presumption thereof great. Penal Code, sections 1270-1271. "*Proof is evident*" and "*presumption great*," defined differently by different courts. *Ex parte Curtis*, 92 Cal. 188.

An ordinance of the city and county of San Francisco imposing a fine not less than \$250.00 and not exceeding \$500.00, or imprisonment not less than three nor more than six months on persons carrying concealed weapons (excepting public officers and travelers), is not reasonable or excessive. *Ex parte Cheney*, Cal. 617.

A municipal ordinance of San Francisco prescribed a punishment, not exceeding \$100.00 fine, or imprisonment not exceeding



six months, or both, for uttering, etc., p and obscene language. *Held*, not void its face as imposing excessive fine or punishment; and that whether the offense in any particular case is such as to justify punishment must be determined by the court. *In re Miller*, 89 Cal. 41.

A sentence under section 1205 Penal Code that defendant be imprisoned in state prison for a definite time and pay a fine and be imprisoned until the fine is paid at the rate of one cent for each dollar of the fine, is void so far as it provides for imprisonment on account of time served after the stated term of imprisonment has been served. *McFarland, J.*, concurring, alluding to *Ex parte Arras*, 78 Cal. 339, expresses his doubt that a prisoner can be punished, even in a county jail. *Thornburg* concurs only because *Ex parte Arras* may be regarded as expressing settled law in this respect. *In re Wadleigh*, 82 Cal. 518. Compare *Ex parte Sing Ah Tong*, 84 Cal. 165.

A fine of nineteen thousand dollars in an order directing defendant retained in custody until fine be paid, ordered stricken from judgment. [Citing *In re Rosenheim*, 188 Cal. 388. *In re Collins*, 23 Pac. Rep. 374.] *See v. Hamberg*, 84 Cal. 469.

For pleading in *habeas corpus* on account of excessive fine, see *Ex parte Rosenheim*, 188 Cal. 388, and that when a court sentences a defendant to a term of imprisonment and to pay a fine for the imprisonment for non-payment of the fine, the imprisonment *continue after the expiration of the term*

d. *In re Collins*, *People v. Hamberg*, and as cited in *Ex parte Rosenheim*, *supra*.

The determination of what is proper or excessive bail does not depend alone upon the amount of money which may have been lost to the party or secured to another by means of the offense committed, but it depends rather upon the moral turpitude of the crime, the danger to the public and the punishment fixed by law for the offense. *In re Williams*, 82 Cal. 183.

A person convicted of assault with a deadly weapon was sentenced to state prison for a term of two years and to pay a fine of \$2000 or to be imprisoned in said state prison until the fine be paid, or be satisfied, at the rate of \$100 for each day. Imprisonment in state prison was accompanied by hard labor. *Held*, that for the offense the court had no authority to substitute imprisonment in state prison on account of the fine. The court had no authority to impose hard labor as part of the punishment. *Ex parte Arras*, 78 Cal. 304.

The punishment prescribed by section 245 of the Penal Code is not excessive, cruel nor unusual. *Ex parte Mitchell*, 70 Cal. 1.

Where a witness has been detained for ninety days, and there have been several continuances of the case which are not satisfactorily accounted for, he is entitled to be discharged by *habeas corpus*. *Ex parte Dresser*, 67 Cal.

A person who has not been examined as a witness before a committing magistrate can-

not be required to give an undertaking with sureties for his appearance at a trial to be held in the Superior Court. A person committed to prison for not furnishing such sureties will be discharged on *habeas corpus*. [Secs. 87, 881 Penal Code.] *Ex parte Shaw*, 61 Cal. 3.

Section 1129, Penal Code, requiring that a defendant in a criminal case on bail may, at the discretion of the court, be ordered into custody when he appears for trial, is not unconstitutional, and the practice is commended. *People v. Williams*, 59 Cal. 674.

The sum of one hundred and thirteen thousand dollars, being the aggregate amount of bail fixed by the municipal criminal court of San Francisco to be given by a defendant before he can answer upon ten indictments for felonies, none of which were capital, considered. The sole purpose which should guide the court in fixing the amount of bail should always be to secure the personal appearance of the defendant to answer the charge against him. It is not the intention of the law to punish an accused person by imprisoning him before trial. The fact that a person is unable to procure sureties in a certain sum and his pecuniary ability may be considered, but is not controlling. The case as presented is not such as to justify the Supreme Court in reducing or fixing a different amount of bail on *habeas corpus*. *Ex parte Duncan*, 53 Cal. 41. Same case, 54 *Id.* 76.

A person arrested upon a charge of felony and arrested in another county, should be taken

the magistrate who issued the warrant, the magistrate of the county from which the warrant issued, for the purpose of being released to bail. [Sec. 821, Pen. Code.] *Ex parte Sing Sin*, 54 Cal. 102. Person arrested on information for murder may be admitted on *habeas corpus*. *Ex parte Strange*, 116.

§ 942, Code of Civil Procedure, authorizing judgment to be entered against sureties on undertaking on appeal to the Supreme Court is not unconstitutional as depriving a party of a right to trial by jury. *Ladd v. Partridge*, Cal. 232.

Courts of law and of equity, in proper exercise of jurisdiction of matters of fraud; in the facts constituting the fraud and the facts sought are such as are cognizable in a court of law, the parties are entitled to a trial by jury; but where the case, as made by the facts, involves the application of the doctrine of equity, and the granting of relief can only be obtained in a court of equity, the parties are not entitled to a jury.

*Benson*, 71 Cal. 429, and decisions thereon.

Defendant cannot insist upon a jury trial in an action of ejectment upon issue of fraud by cross-complaint. *Fish v. Benson*, 133.

When a party is once placed upon his trial before a competent court and jury upon a valid indictment, the "jeopardy" attaches, to which he cannot be again subjected, unless the jury

be discharged from rendering a verdict by a legal necessity, or by his consent; or, in case a verdict is rendered, if it be set aside at his instance. *People v. Horn*, 70 Cal. 17.

The right to trial by jury is not waived in a civil case by neglecting to demand a jury at the time the case is called to be set for trial, notwithstanding a rule of court that a jury shall then be demanded. The court had no power to declare by its rules what shall constitute a waiver of a constitutional right. *Briggs v. Lloyd*, 70 Cal. 447.

An action to foreclose a mortgage is equitable, and the parties are not entitled to a jury as a matter of right. *Curnow v. Blue Gravel etc. Co.*, 68 Cal. 262.

A plea of guilty in a criminal case is a waiver of trial by jury. *People v. Lennox*, 67 Cal. 113.

Jury cannot be demanded as a matter of right in divorce proceedings. *Cassidy v. Sullivan*, 64 Cal. 266.

A party charged with the crime of murder committed in San Mateo county cannot be tried therefor in San Francisco on change of venue procured on motion of district attorney of San Mateo, on the alleged ground that a fair and impartial trial cannot be had in the latter county. The right of trial by jury means the same now as it meant at common law, *i. e.*, a trial by jurors of the vicinage or county. Section 1033, Penal Code, so far as it authorizes change of venue on application

a of district attorney, without consent of defend-  
se ant, is void. *People v. Powell*, 87 Cal. 360.

is A defendant has no vested right to trial by  
in a particular jury, especially where he is tried  
it by a jury selected in the same manner as the  
l. other, and all his rights of challenge to the  
v new jurors were preserved. *People v. Mur-*  
ray, 85 Cal. 350.

The summary proceedings under section 772  
of Penal Code for trying misdemeanors in  
office, and the manner of trial, without a jury,  
are such as the legislature had power to enact.  
*Woods v. Varnum*, 85 Cal. 639.

The denial by a justice of the peace of a  
jury trial to a person charged with violating  
an ordinance of the supervisors, a violation of  
which ordinance was declared to be a misde-  
meanor, is an error which cannot be reached  
by *habeas corpus*, the justice having jurisdic-  
tion of the offense. *In re Miller*, 82 Cal. 454.

If, in an action brought under section 738,  
Code of Civil Procedure, the plaintiff avers a  
legal title against the defendant in possession,  
the latter is perhaps entitled to a jury trial of  
the issue of law thus presented. *Hyde v.*  
*Redding*, 74 Cal. 493.

A rule of the Superior Court requiring the  
party demanding a jury to deposit the jury  
fee in advance of the trial is a reasonable reg-  
ulation and is not a denial or impairment of  
the right of trial by jury. *Conneau v. Geis*,  
73 Cal. 176.

SECTION 7. The right of trial by jury shall be secured to all, and remain inviolate; but in civil action three-fourths of the jury may render a verdict. A trial by jury may be waived in all criminal cases, not amounting to felony, by the consent of both parties, expressed in open court, and in civil actions by the consent of the parties, signified in such manner as may be prescribed by law. In civil actions and cases of misdemeanor the jury may consist of twelve, or of any number less than twelve upon which the parties may agree in open court.

Const. 1849, Art. I, Sec. 3.

In *People v. Bemmerly*, 87 Cal. 117, and several prior decisions in this state there cited, it was held that no exception could be reserved to the ruling of the trial court denying a challenge for actual bias, and it was further held in *People v. Ah Lee Doon*, 97 Cal. 171, that to deny such exception does not deprive a defendant of one of the essential constituents of a right of trial by jury. However, in *People v. Wong Ark*, 96 Cal. 125, Justices Garrouette and DeHaven, in a concurring opinion, presented strong reasons for a different rule upon the ground that to deny an exception to such ruling and appeal therefrom, was practically to compel a defendant to be tried by a prejudiced and unfair jury. And in *People v. Wells*, 100 Cal. 227, it is held that a defendant is entitled to such exception and that the ruling of the trial court will be reviewed on appeal, practically determining the unconstitutionality of section 1170, Penal Code.

It may be conceded that the legislature may authorize the summary trial, without a

try in minor or petty offenses arising from violations of municipal ordinances, which are not intrinsically criminal, but when the offense may be considered as against the public at large, and where it falls within the legal or common law notion of crime or misdemeanor, and especially where being of such nature, it is embraced in the criminal code of the state, then the constitution guarantees and tends to secure the liberties of the citizen and the right to trial by jury cannot be denied. So held with reference to a violation of an ordinance against obstructions on sidewalks, such obstructions being also prohibited and declared a nuisance under sections 370, 2 Penal Code. *Taylor v. Reynolds*, 92, Cal. 3.

Unless a party waives his right to trial by jury in a civil case (where trial by jury is proper), in one of the ways "provided by law," the court has no power to deny him a jury. *Arwell v. Murray* 104 Cal. 467.

A defendant accused of practicing medicine without a license is entitled to jury trial in police justice's court. The legislature has no right to take away the right to trial by jury in offenses against the public at large, and which fall within the common-law notion of crime or misdemeanor and which are embraced in the general legislation of the state. *Ex parte Wong You Ting*, 106 Cal. 297.

On a trial of the question of the disbarment of an attorney at law the accused is not entitled to a jury. *Sec. 297* of the Code of



Civil Procedure provides for a trial by the court, and that section is not unconstitutional. *In re Wharton* 114 Cal. 368.

SECTION 8. Offenses heretofore required to be prosecuted by indictment shall be prosecuted by information, after examination and commitment by a magistrate, or by indictment, with or without such examination and commitment, as may be prescribed by law. A grand jury shall be drawn and summoned at least once a year in each county.

The power of Superior Court to summon a grand jury by an *elisor* only occurs when the sheriff is in some manner challenged as incompetent. Writ of prohibition will lie to prevent trial of indictment purporting to have been found by a grand jury illegally summoned by an *elisor*. *Bruner v. Superior Court*, 92 Cal. 240, Beatty, C. J. and Sharpstein, J. dissenting.

Where a defendant, after examination before a magistrate, was charged by information with grand larceny, and upon trial the jury failed to agree, and the court directed a dismissal of that information, and a new information for embezzlement was filed without re-examination before the magistrate, *Held*, defendant was not entitled to discharge on *habeas corpus*, *Paterson, J.*, dissenting. *Ex parte Nicholas*, 91 Cal. 640.

The information must be filed within one year as is prescribed by law. Section 801, Penal Code. And objection may be raised by demurrer. Section 1004, *Id.* *People v. Ayhens*, 85 Cal. 88.

The former constitution [Sec. 8, Art. I], provided that no person shall be held to answer for a capital or otherwise infamous crime (except in cases of petit larceny), unless upon presentment or indictment by grand jury, and it is held by Paterson, J., in dissenting opinion that there are misdemeanors known as infamous crimes which could be prosecuted by indictment (or information) in Superior Court, and that this section is but a re-enactment of the corresponding section in old constitution. *Green v. Superior Court*, 78 Cal. 565.

For case illustrating irregularities in the manner of drawing grand jury, yet not in excess of the jurisdiction of the court, see *Levy v. Wilson*, 69 Cal. 105. The grand jury is part of the court by which it is convened, and a person summoned before it as a witness may be punished for contempt for refusing to give evidence. *In re Gannon*, 69 Cal. 541.

A homicide committed before adoption of the constitution may be prosecuted by information. *People v. Campbell*, 59 Cal. 243. *Sharpstein, McKinstry and Thornton* dissenting.

The provision for proceeding by information is not in conflict with section 1, article XIV, of the constitution of United States. *Kalloch v. Superior Court*, 56 Cal. 229. Approved in *People v. McCurdy*, 68 *Id.* 576.

Where there has been an examination and commitment by a *magistrate*, that is sufficient to *authorize the filing of an information* by

the district attorney. *People v. Wheeler*, 65 Cal. 77.

A grand jury drawn in 1885 from the list of jurors for that year, does not become dissolved with the beginning of a new year, but may continue as a grand jury in 1886. *In re Gannon*, 69 Cal. 541, 545.

The district attorney in drawing an information is not controlled by the name which the magistrate may have given to an offense, but must charge defendant with the offense disclosed by the depositions taken before the magistrate. *People v. Vierra*, 67 Cal. 231. And information may be filed before the shorthand notes of the depositions are written out. Failure to file or transcribe the shorthand notes will not divest the Superior Court of its jurisdiction. *People v. Riley*, 65 Cal. 107.

The mere ownership by the United States of land or property within a county does not show any federal jurisdiction over crimes committed upon it, as that fact does not oust the jurisdiction of the state; but the ownership must be acquired by *purchase* with the consent of the legislature, which is held to include the acquisition of property by eminent domain. *People v. Collins*, 105 Cal. 509.

Persons cannot be prosecuted criminally by means of "information" filed, except after examination and commitment by a magistrate. [Sec. 995 Penal Code.] *People v. Napthaly*, 105 Cal. 644.

*The "information" alluded to in section*

682, Penal Code, is the information that is named in the constitution, and proceedings for the removal of civil officers, are excepted from that mode of prosecution. See Sec. 772, Pen. Code; *In re Curtis*, 108 Cal. 663.

The constitution has omitted all reference to "presentment" by a grand jury as a means of charging persons with a criminal offence, and a grand jury has no authority to proceed by "presentment" for such purpose. *In re Grosbois*, 109 Cal. 449.

SECTION 9. Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted, and the jury shall have the right to determine the law and the fact. Indictments found, or information laid for publications in newspapers shall be tried in the county where such newspapers have their publication office, or in the county where the party alleged to be libeled resided at the time of the alleged publication, unless the place of trial shall be changed for good cause.

Const. 1849, Art. I, Sec. 9.

The provision as to the trial in the county where the newspaper is published or in the county where the person alleged to be libeled resides, applies also to the person who causes the libel to be published. All persons guilty of such libels are liable to be tried at the places specified *in the constitution*, without refer-

ence to the fact whether they are or not the editors or proprietors of the newspapers. *In re Kowalsky*, 73 Cal. 120.

A court, even of equity jurisdiction, has no jurisdiction to enjoin the production on a theatrical stage of a play representing facts or scenes connected with a homicide, even while the person accused of the homicide, is on trial for murder. The right to write, speak or publish cannot be abused until it is exercised; before it is exercised there can be no responsibility. The purpose of this provision of the constitution was the abolishment of censorship, and for courts to act as censors is directly violative of that purpose. *Daily v. Superior Court*, 112 Cal. 96.

The contention that there is no libel where express malice is absent in the publication cannot be sustained. *Gilman v. McClatchy*, 111 Cal. 613.

Criminal libel was one of the offences required to be prosecuted by indictment. Justices of the Supreme Court, judges of the Superior Court, justices of the peace and police judges may sit as magistrates, and when so sitting, they have the jurisdiction and powers conferred by law upon magistrates and not those which pertain to their respective judicial offices. They derive their powers from the constitution, operating with the acts of the legislature upon the subject. Police judges in San Francisco have authority to hold examinations of such offences *as criminal libel*. *People v. Crespi*, 115 Cal. 52.

SECTION 10. The people shall have the right to freely assemble together to consult for the common good, to instruct their representatives and to petition the legislature for redress of grievances.

Const. 1849, Art. I, Sec. 10.

SECTION 11. All laws of a general nature shall have a uniform operation.

Const. 1849, Art. I Sec. 11.

The act of legislature amending county government act [Stats. 1887, p. 207], authorizing supervisors in counties of certain classes to appoint deputies for county clerk, when deemed necessary, and pay such deputies from county treasury, is void, and makes the county government act lacking in that uniformity of operation which is required by court. *Dougherty v. Austin*, 94 Cal. 626 and 603; *McFarland and Paterson, JJ.*, dissenting. The legislative act [Stats. 1883, Sec. 870; p. 273], requiring cities of fifth and sixth classes to make an effort to agree with property owners as to value of land sought to be condemned for public use, before bringing action under powers of eminent domain, and which effort is not required to be made by cities of other classes is a discrimination against cities of fifth and sixth classes and void. *City of Pasadena v. Stimson*, 91 Cal. 238.

Section 64 of insolvent act of 1880, permitting an appeal to Supreme Court from an order adjudging a party guilty of contempt is in conflict with section 1222 Code of Civil Procedure, and must *yield to the latter* in order

that laws of a general nature shall have a uniform operation. *Ex parte* Clancy, 90 Cal. 553.

The act of March 18, 1885 [Stats. p. 213], commonly known as the "Whitney Act," establishing *police courts* in cities having a population of more than thirty thousand and less than one hundred thousand inhabitants, is not a special law, nor unconstitutional; such classification of cities is consistent with a general law, whether the city was organized before or after the constitution of 1879. *People v. Henshaw*, 76 Cal. 436. Approved in *Ex parte* Halstead, 89 Cal. 472.

The act of March 14, 1891 [Stats. p. 106], readjusting and reducing the salaries of officers in counties of thirty-fifth class, being applicable alike to all counties of a class authorized to be created by the constitution is a general law; (distinguishing *Miller v. Kister*, 68 Cal. 142, and citing *People v. Henshaw*, 76 *Id.* 444; *Longan v. Solano County*, 65 *Id.* 125; *Thomason v. Ashworth*, 73 *Id.* 73), *Cody v. Murphy*, 89 Cal. 522.

A law to be general in its scope need not include all classes of individuals in the scale. It answers the requirements of the constitution if it relates to and operates uniformly upon the whole of any single class. *Abeel v. Clark*, 84 Cal. 227.

The amendment of 1889 [Stats. p. 232], to the county government act, requiring license taxes collected in any incorporated city or town, under ordinances of the county supervisors or *under Political Code*, part 3, title 7, chapter

15, is not a general law being applicable to a single class of counties. [Art. IV, Sec. 25, Subs. 9, 33.] County of San Luis Obispo v. Graves, 84 Cal. 71.

It is left to the legislature by section 13, article XIII, to provide for carrying into effect the constitutional system of taxation. But this power is controlled by other provisions inhibiting special and discriminating legislation. The scheme provided in sections 3665 to 3670, Political Code for assessment of railroad property and form of complaint in actions for collection thereof, is obnoxious to all these provisions. People v. C. P. R. R., 83 Cal. 393.

The act of March 25, 1885 [Stats. p. 213], is not special legislation; it has a uniform operation within the class of cities to which it is applicable, and is a general law in the sense that the police courts established thereby supersede the police courts theretofore existing in the cities therein specified. People v. Henshaw, 76 Cal. 436.

The act of March 15, 1883 [Sec. 1388 Penal Code], providing that the court may suspend judgment against a minor convicted of a criminal offense and commit such minor to some non-sectarian charitable institution, is a general law having a uniform operation. Boys and Girls' Aid Society v. Reis, 71 Cal. 627.

The act of March 14, 1883 [Stats. p. 299], establishing a uniform system of county and township government was declared to be a general law and constitutional in Longan v.



Solano County, 65 Cal. 122. The act of March 18, 1885 [Stats. pp. 166-195], amending the former act, without reclassifying counties of the thirty-fifth class, and purporting to affect only three of the forty-eight classes into which the counties of the state have been classified (reducing salaries in said three classes), is exceptional, eccentric, and causative of discrimination between officers upon whom it operates, and is unconstitutional. [Citing *Omni-bus R. R. Co. v. Baldwin*, 57 Cal. 165; *French v. Teschemaker*, 24 Cal. 544; *Christy v. Board of Supervisors*, 39 Cal. 3], *Miller v. Kister*, 68 Cal. 142.

An ordinance of the supervisors of the city and county of San Francisco requiring persons conducting laundries or wash houses within certain limits to procure a certificate from the health officer showing that proper drainage was provided, and a certificate from the fire wardens that the heating appliances were in a safe condition, and prohibiting washing or ironing from ten o'clock P. M. to six o'clock A. M. and on Sunday. *Held* constitutional. *Ex parte Moynier*, 65 Cal. 33. And as to Modesta Laundry ordinance, *In re Hang Kie*, 69 *Id.* 149.

The Sunday Law contained in section 300 of Penal Code, as adopted in 1872, was a general law, and uniform in its operation, and was not repealed by this constitution. *Ex parte Burke*, 59 Cal. 6. As to what is a general law, affirmed in *Ex parte Koser*, 60 *Id.* 178.

The act of March 29, 1870 [Stats. p. 481], *limiting the distance which one street railway*

might use the tracks of another in any one street to five blocks [C. C. section 499], was a general law, and an ordinance of San Francisco granting such privilege for more than five blocks was void. *Omnibus R. R. Co. v. Baldwin*, 57 Cal. 160.

The McClure Charter for San Francisco [Stats. 1880, p. 414], was not a general law. It could have no effect anywhere except in San Francisco, by its terms, and as it was not adopted as a special charter by vote of the people of San Francisco, it never became operative anywhere. *Desmond v. Dunn*, 55 Cal. 242.

An act of the legislature validating conveyances from the city of San Diego, which had no corporate seal, is constitutional, and is operative in all cases where no vested rights in third persons accrued between the execution of the deed and the passage of the curative act. *Gordon v. City of San Diego*, 101 Cal. 528.

The act of March 11, 1885 [Stats. p. 45], regulating the height of division fences in cities must be construed as a general law, and so construed is not unconstitutional. *Western, etc., Co. v. Knickerbocker*, 103 Cal. 114.

The constitution must be construed to permit of classifications. Such classification, however, must be founded upon differences which are either defined by the constitution or natural, and which will suggest a reason which might rationally be held to justify the diversity in the legislation. *Darcy v. Mayor of San José*, 104 Cal. 645.

Section 195 of the county government act of 1891 [Stats. 1891, p. 397], which provided for the collection by the county clerk in certain counties of a fee of one dollar, for each one thousand dollars of the value of an estate (in excess of \$5000.00), in probate cases, was held violative of this and other provisions of the constitution. *Bloss v. Lewis*, 109 Cal. 497. For similar case affecting witness fees in counties of twenty-eighth class, see *Turner v. County of Siskiyou*, 109 Cal. 334.

The act of March 11, 1889 [Stats. p. 100-106] establishing the Preston Industrial School is not unconstitutional in the respect that juvenile offenders may be confined there instead of at a state prison or county jail, nor because a justice of the peace may impose a longer term of confinement there than he could in a common jail. *Ex parte Nichols*, 110 Cal. 652.

The subject of primary elections is one to which a general law having a uniform operation is applicable, and the primary election law of 1895 [Stats. p. 207], applying only to counties of the first and second classes, is unconstitutional. *Marsh v. Supervisors Los Angeles County*, 111 Cal. 370. See also *Gett v. Supervisors Sacramento*, 111 Cal. 367.

The provisions of sections 162 and 216 of the county government act of 1895 [Stats. pp. 1-11], requiring assessors in counties of the second class to pay into the county treasury the percentages allowed for collecting poll taxes, personal property taxes, and the sums

Uniformity. Such provisions apply with uniformity to all counties of a given class, and a class is constituted by a general law in conformity with the constitutional provision. XI, Secs. 5, 6.]. *Summerland v. Bicknell*, Cal. 568.

It is only general laws that are to have a uniform operation, and it is uniformly held that a law is general which applies to all of a —the classification being a proper one— that the requirement of uniformity is satisfied if it applies to all of the class alike. The uniform does not mean universal. *Hellv. Shoulters*, 114 Cal. 139. See also *Ex Jeutzsch*, 112 Cal. 474.

Under the rule of construction that an independent section or clause of a statute may be declared void without holding the entire act void, and the rule that the legislature is not to be presumed to have knowingly en-

quadrennial elections should be applicable to all counties. *Hale v. McGettigan*, 114 Cal. 113.

Neither this nor any other provision of the constitution requires that the term of office of justices of the peace shall be the same in cities as in townships. *Kahn v. Sutro*, 114 Cal. 318.

That portion of the fee bill of 1895 [Stats. p. 9 Palm Ed.], which gives the district attorney supervisory control over fees of justices and constables in criminal cases is unconstitutional, both as destroying a uniformity of operation and as improperly regulating the compensation of officers. [Sec. 5, Art. XI, Const.] The fee bill of 1895, however, fixes the amount which officers may legally charge and collect for services, and is applicable to the city and county of San Francisco. *Dwyer v. Parker*, 115 Cal. 546; *Reid v. Groezinger*, 115 Cal. 552.

The act of 1880 [Stats. p. 400], requiring mining corporations to post weekly reports of their superintendents and imposing a fine of one thousand dollars for failure to comply therewith, is not unconstitutional, but the same is a general law having a uniform operation upon the subjects with which it deals. *Miles v. Woodward*, 115 Cal. 310.

The act of 1891 [Stats. p. 433], assuming to create police courts in cities having fifteen thousand and under eighteen thousand inhabitants is unconstitutional, in its "classification." *Ex parte Giambonini*, 117 Cal. 574.

An act regulating the payment of official fees in San Francisco being based upon an

arbitrary distinction, and there being no apparent reason why the inhabitants of a city of more than one hundred thousand inhabitants should be accorded a special protection which is not accorded to other cities, the act is unconstitutional. *Rauer v. Williams*, 118 Cal. 404-408. See further as to "classification," *Tulare County v. May*, 118 Cal. 305.

The distinction between secured and unsecured taxes is intrinsic and justifies a classification based thereupon, and a law providing for the collection of the unsecured tax on personal property at a different time and in a different manner from the collection of personal property taxes secured by lien upon real estate is not unconstitutional. *Rode v. Siebe*, 119 Cal. 519.

SECTION 12. The military shall be subordinate to the civil power. No standing army shall be kept up by this state in time of peace, and no soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, except in the manner prescribed by law.

Const. 1849, Art. I, Secs. 12, 13.

SECTION 13. In criminal prosecutions, in any court whatever the party accused shall have the right to a speedy and public trial; to have the process of the court to compel the attendance of witnesses in his behalf, and to appear and defend, in person and with counsel. No person shall be twice put in jeopardy for the same offense, nor be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty or property without due process of law. The legislature shall have power to provide for the taking, in the presence of *the party accused and his counsel*, of depo-

sitions of witnesses in criminal cases, other than cases of homicide, when there is reason to believe that the witness, from inability or other cause, will not attend at the trial.

Const. 1849, Art. I, Sec. 8.

Section 626, Penal Code, prohibiting the having or vending of certain game in this state during certain periods, is sufficient to prohibit such acts, even though the game be lawfully killed in another state and brought into this state. Such law is not in violation of the constitution declaring that no person shall be deprived of life, liberty or property without due process of law, it appearing that the property in the game was acquired after the passage of the act. *Ex parte Maier*, 103 Cal. 476.

An insolvent debtor having been charged by the assignee with having concealed, etc., his property, was cited to appear for examination in court, and being sworn he declined to answer upon the ground that his answers might be made the ground of a criminal charge against him. [Sec. 154, Penal Code; Const. Art. I, Sec. 13.] To bring a person within the immunity of the constitutional provision, it is not necessary that the examination should be attempted in a criminal prosecution against the witness, or that such prosecution should have been already commenced. It is sufficient if there is a law creating the offense under which the witness may be prosecuted. *Ex parte Clark*, 103 Cal. 352. See *Ex parte Gould*, 99 Cal. 360, *infra*.

rial is to be public in all respects, with regard to the size of the court room, the amenities of the court, the right to exclude objectionable characters and youth of tender age and to do other things which may facilitate proper conduct of the trial. An order excluding all persons but the officers of the court and defendant has no justification in the present modern times. *People v. Hartman*, 141 Cal. 242. *Contra*. The word "public" is used only in contradistinction to "secret." *People v. Swafford*, 65 Cal. 223, *infra*.

A person was charged by information filed in Kern county. Subsequently that county was divided and Kings county created from a portion of its territory. The particular locality where the crime was alleged to have been committed was within the new county. The prosecution in Tulare county was dismissed.



mates that the jury will be hung by two of its members, and that such members are known, and that bribery exists to effect such result, is calculated to defeat a fair and impartial trial, and a judgment of conviction will be set aside and new trial granted. *People v. Stokes*, 103 Cal. 193.

Proceedings for contempt are criminal in character, and party accused may be proceeded against by information or indictment in some cases, as well as by summary action by the court. Person proceeded against summarily cannot be compelled to be a witness. [Sec. 1323, Pen. Code; 1209-1222, C. C. P.] *Ex parte Gould*, 99 Cal. 360.

A city ordinance may impose additional penalties from statute law, or embrace additional subject. So long as the offense is different, a person may be proceeded against under either or both. *Ex parte Hong Shen*, 98 Cal. 681.

Deposition of witness taken at former trial not within this provision and not admissible. [Sec. 686, Pen. Code.] *People v. Gordon*, 99 Cal. 227.

Section 8, county government act, provides that whenever any board of supervisors shall, without authority of law, order any money paid as salary or fees, and such money shall have been actually paid, it shall be the duty of the district attorney to bring suit in name of county against person to whom the money was paid, to recover the same, with twenty per cent. damages for the use thereof. *Held*,

he provision for recovery of damages is not unconstitutional, as taking property without due process of law. *Orange Co. v. Harris*, 7 Cal. 600.

Section 720, Code of Civil Procedure, authorizing judgment creditor to institute supplemental proceedings against debtor of the judgment debtor is not unconstitutional, as a taking of property without due process of law. *High v. Bank of Commerce*, 95 Cal. 386.

Convicted felons are [Secs. 1878-1881, C. C. ] made competent witnesses, and defendants on trial are entitled to have such witness brought from the penitentiary [Sec. 1567, Pen. Code] upon a proper showing of materiality of the testimony. *People v. Willard*, 92 Cal. 482.

Section 1382, Penal Code, is mandatory, and prescribes the means, and the only means, of enforcing the constitutional right to a speedy and public trial. *People v. Staples*, 91 Cal. 29, citing *People v. Morino*, 85 Cal. 515.

The act of 1889 [Stats. p. 70] relating to opening, widening, etc., of streets, does not provide for taking property without due process of law. The act provides due notice of every material step taken in the proceedings, and it is not unconstitutional that such notice may be given by posting instead of personally. *Davies v. City of Los Angeles*, 86 Cal. 37.

It is the duty of the court to submit to the jury the issue raised by a plea of former jeopardy, and have it specially passed on, in addition to *the general finding* upon the plea

of not guilty. *People v. Hamburg*, 84 Cal. 468; [*People v. Fuqua*, 61 Cal. 377.]

If section 1180, Penal Code, authorizes defendant to be tried for higher offense after conviction of lower offense has been set aside at his instance, it is unconstitutional. *People v. Gordon*, 99 Cal. 227. See *People v. Carty*, 77 Cal. 213, and *People v. Keefer*, 65 Cal. 232, where it was held that a conviction for manslaughter being set aside on defendant's appeal, he could afterwards be convicted of murder under the same indictment or information.

The plea of once in jeopardy and former acquittal must be entered in the minutes substantially as prescribed by section 1017, Penal Code. *People v. O'Leary*, 77 Cal. 30.

When defendant procures a reversal of a judgment against him upon appeal, though asking for a discharge because of insufficiency of the verdict, and not for a new trial, if the prayer for discharge be denied and new trial ordered, he will be deemed to have impliedly assented to all the consequences legitimately following his appeal, and a plea of once in jeopardy by reason of the former trial cannot be sustained upon the new trial. *People v. Travers*, 77 Cal. 176.

There cannot be as many prosecutions for libel maintained upon a single article published in a single issue of a newspaper as there are false and defamatory statements concerning a single individual in such article. "Out of the same facts a series of charges shall

e preferred." A plea of former jeopardy stained at second trial for libel based a libelous statement contained in a news- article, by evidence of former trial upon a different libel contained in the article published at same time, etc. *Peo- Stephens*, 79 Cal. 428.

e commencement of a trial and discharge jury because of the sickness of one of rors without the consent of defendant, not result in an acquittal, nor being in rdy. *People v. Ross*, 85 Cal. 383.

tion 1382 of Penal Code prescribing the within which an information or indictment must be filed against a person charged crime, and a time thereafter within he must be tried, are mandatory and no discretion in the court to prolong me of imprisonment without a trial. e an information was filed and the de- nt within five days entered a plea of not r, the case should have been dismissed s motion made more than sixty days the filing of the information where he not been brought to trial within that and the prosecution showed no valid rea- or the delay. *People v. Morino*, 85 Cal.

e Superior Court being led, through and misrepresentation of counsel, to e that the Supreme Court had, on appeal, sed an order refusing a new trial, instead ving reversed *an order granting a new permitted the defendant to plead guilty*

of a lesser offense than that with which she was charged, and had in fact been convicted by verdict of a jury. A fine having been paid in satisfaction of a judgment of the court entered on the plea of guilty, and the defendant having been again brought before the court to receive sentence upon the verdict of the jury. *Held*, she had not been in jeopardy by reason of the plea of guilty of the lesser offense and the judgment of fine. *People v. Woods*, 84 Cal. 441.

The right to have compulsory process for the attendance of witnesses does not give an absolute right to a defendant in a criminal case to have an order of court for the production of a witness confined in state prison. The necessity of the production is a matter of sound discretion with the trial court. *Willard v. Superior Court*, 82 Cal. 456.

The act of April 1, 1878 [Stats. p. 106], provided that on the death of a police officer of San Francisco, the city and county treasurer should pay a certain sum to his legal representatives out of a certain fund created by said act. *Held*, this did not create a vested right in the officer during his life, and the subsequent act of March 4, 1889 [Stats. p. 56], creating a police relief and pension fund in the several cities and counties of the state, and providing that any fund provided by law and theretofore existing in any county, city or town for the relief or pensioning of police officers, etc., or for the payment of a sum of money on their *death*, should be merged in the fund created

by the latter act, impliedly repealed the act of 1878, and did not deprive such officers of property without due process of law. *Pennie v. Reis*, 80 Cal. 266.

A person acquitted on trial for assault with deadly weapon for variance as to the name of the person assaulted, and a new information ordered, is not entitled to a plea of twice in jeopardy, on the second trial. *People v. Oreileus*, 79 Cal. 178.

The act of April 15, 1880 [Stats. p. 227], providing for protection of lands from overflow, authorizes the taking of property without due process of law, in that it does not provide for notice to the owners to be heard as to the validity of the assessment. *Hutson v. Woodbridge*, P. Dist., 79 Cal. 9.

Counsel should be appointed for a defendant charged with murder; a plea of not guilty having been entered, and insanity being relied upon as a defense, where the defendant's employed counsel is absent at the legislature, and his employment as counsel does not appear to have been made prior to commencement of legislative session. *People v. Goldenson*, 76 Cal. 328.

A defendant cannot plead once in jeopardy where at a former trial he consented to the discharge of a jury which had brought in a void judgment. *People v. Curtis*, 76 Cal. 57.

The examination before a magistrate, and discharge upon a criminal accusation is not jeopardy, and will *not* bar a second arrest and examination. *Ex parte Fenton*, 77 Cal. 183.

It has been held in New York that an act which substantially destroys the property in intoxicating liquors owned and possessed by a party within the state when the act took effect by preventing its sale, keeping, giving away, etc., is inoperative and void, as depriving a person of property without due process of law. The question not being properly presented to this court by the record, is not decided. *Ex parte Campbell*, 74 Cal. 20.

The provisions of the act of March 7, 1887 [Stats. p. 46], to prohibit the sophistication and adulteration of wine and to prevent fraud, are not so unreasonable in their restrictions as to deprive any persons of their property without due process of law. *Ex parte Kohler*, 74 Cal. 38.

A defendant convicted of assault with a deadly weapon under an information charging him with assault with intent to commit murder, is not placed twice in jeopardy by afterwards being tried upon a charge of attempt to commit robbery, although the offenses were so closely connected in point of time that it is impossible to separate the evidence relating to them [*People v. Bentley*, 77 Cal. 7], and where the verdict fails to find the degree of the crime [*People v. Travers*, 73 Cal. 580].

The power to determine the expediency of a public improvement is legislative in character not judicial, and the act of March 26, 1876 [Stats. p. 433], for widening of Dupont street in San Francisco, which left it to the supervisors to first determine or pass upon the expe

ncy of the proposed improvement, before act should take effect, was not a taking of property without a due process of law. There is no constitutional right of the owner to be heard in such matters before an assessment is made. *Lent v. Tillson*, 72 Cal. 404.

A person is in jeopardy when placed upon trial before a competent court and jury upon a valid indictment, and cannot be again subjected to trial for same offense, unless the jury is discharged without a verdict by reason of some legal necessity, or by his consent, or upon their verdict, if against him, be set aside in his instance. [*People v. Webb*, 38 Cal. 467]; *People v. Horn*, 70 Cal. 17.

One private person cannot take the property of another, either for the use of the taker or an alleged public use, without any compensation made or tendered. *Lux v. Haggin*, 69 Cal. 265. The action of the court in sending a jury in charge of an officer to view the premises where a homicide has been committed, the defendant accompanying the jury, permits the receiving of evidence by the jury not in the presence of the defendant, and is not allowing defendant to be present in person in all stages of the proceeding. Section 1119 Penal Code does not contemplate the absence of defendant. [*Myk and McKee*, JJ., dissent.] There should be no evidence taken in the absence either of the court or defendant. [*Searls*, Comr., *Thornhill and McKinstry*, JJ., concurring.] *People v. Bush*, 68 Cal. 623.

*A person is not placed in jeopardy by a con-*



viction upon an indictment charging a crime to have been committed on a day subsequent to the date of its filing. *People v. Larson*, 68 Cal. 18. Citing *People v. Clark*, 67 Cal. 99.

Where defendant was present and had opportunity to cross-examine a witness whose deposition was taken before the committing magistrate, such deposition may be read in evidence at his trial, proof being made that the person whose deposition it is is absent from the state. Sections 686 and 689 Penal Code are constitutional. *People v. Oiler*, 66 Cal. 101.

A defendant in a criminal action cannot be cross-examined or questioned upon matters upon which he was not examined in chief. There is no power in the court to compel a defendant to take the stand. Section 1323 Penal Code. *People v. O'Brien*, 66 Cal. 602, *McKee and Thornton, JJ.*, dissenting, hold that the privilege of not testifying may be waived, and when a defendant testifies in his own behalf, he becomes a witness in the case, subject to be examined and cross-examined as any other witness.

The provision for public trial is not violated by the court excluding from the room all persons except the judge, jurors, witnesses and persons connected with the trial. *People v. Swafford*, 65 Cal. 223. *Contra*, *People v. Hartman*, 103 Cal. 245.

Where defendant was convicted upon a defective information for murder and procures a reversal on appeal with directions for further proceedings, and the action is dismissed and a

new information filed, he cannot plead former jeopardy or conviction. *People v. Schmidt*, 64 Cal. 260.

Where a person is charged by information with a prior conviction of a similar offense, he is not thereby placed twice in jeopardy for the same offense. *People v. Lewis*, 64 Cal. 401.

The act of March 25, 1868 [Stats. p. 316], for the protection of certain lands in Sutter county from overflow, is unconstitutional, in that it does not provide due process of law for the taking of private property. *Moulton v. Parks*, 64 Cal. 166.

The act of April 1, 1876 [Stats. p. 653], authorizing the city of Oakland to construct a bridge across the estuary of San Antonio, and declaring that the costs should be assessed upon certain specified lands therein declared to be benefited, in proportion to such benefits, and providing for a commission to apportion costs, is constitutional. *Pacific Bridge Co. v. Kirkham*, 64 Cal. 519.

The constitution does not prohibit the legislature from providing for the taking of depositions by defendant in every class of criminal cases. *People v. Hurtado*, 63 Cal. 288.

While a demurrer to a criminal information was under consideration by the court, another information against the defendant, for the same offense, was filed. Subsequently the demurrer was sustained, but no order was made or requested permitting a new information to be filed, nor *any opinion* expressed to the effect *that the defect could be cured by a*

new information. *Held*, the judgment on demurrer was a bar to a prosecution under the second information. [Pen. Code, Sec. 1008], *People v. Jordan*, 63 Cal. 219.

Section 1206, C. C. P., giving a preference to certain labor claims in cases of attachment, provides also for sufficient notice, and is not unconstitutional, as taking property without due process of law; neither is it special legislation. *Mohle v. Tschirch*, 63 Cal. 381.

Sections 284, 285, C. C. P., relating to the substitution of attorneys, have no application to criminal cases, where a defendant is entitled to appear in person and with counsel. *Ex parte Clarke*, 62 Cal. 491.

In construing provisions of Political Code [Secs. 3449 to 3459] relating to the assessment of lands within reclamation districts, it is *Held*, that no assessment against land can be enforced except by action to which the owner must be made a party; it is immaterial whether he has notice before the assessment, if in the subsequent proceeding he has his day in court with full opportunity to contest the charge before it is declared a lien upon his land or a judgment to be collected out of his property. *Reclamation Dist. No. 108 v. Evans*, 61 Cal. 104.

So much of section 636, Penal Code, as authorized the seizing and selling or destroying of nets, etc., employed in unlawful fishing, as said section read in 1878, is unconstitutional, as authorizing the taking of private property

without due process of law. *Teck v. Anderson*, 57 Cal. 251.

Due process of law, as used in the constitution of the United States and in state constitutions, convey the same meaning as "the law of the land" in Magna Charta; and in the usual acceptation, are to be regarded as meaning general public laws binding all the members of the community under similar circumstances, and not partial or private laws affecting individuals. *Kalloch v. Superior Court*, 56 Cal. 229.

The constitutional guarantee of the right to appear and defend in person and with counsel does not extend to a person who has been convicted and escaped from custody the right to be represented in the appellate court by counsel while he remains at liberty, and in such case the Supreme Court will order his appeal to stand dismissed unless defendant returns to custody within a specified time. *People v. Redinger*, 55 Cal. 290.

Question as to constitutionality of sections 686, 869, Penal Code, as to introducing upon the trial depositions of witnesses taken before committing magistrate, not decided. *People v. Morine*, 54 Cal. 575. Where the reporter's notes are offered in evidence in case of perjury to show what the defendant swore to at the preliminary examination of another person, his testimony at that time having been taken through an interpreter, *Held*, in the absence of the reporter and the interpreter and no showing *accounting for their absence*, the

notes are not admissible. The provision of the code making reporter's notes *prima facie* evidence is not applicable where an interpreter was employed. *People v. Lee Fat*, 54 Cal. 531.

Due process of law in its broad sense, signifies such an exercise of the powers of the government as the settled maxims of the law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe. *Wulzen v. Board of Supervisors*, 101 Cal. 20.

The constitutional protection to persons against being compelled to be witness against themselves is secured by the provision of the purity of elections law of 1893. Such witness is protected from punishment for the offense with reference to which his testimony is given, and is not protected from answering. *Ex parte Cohen*, 104 Cal. 527; see also *People v. Clarke*, 103 Cal. 354.

Sections 1459 and 1460 of the Code of Civil Procedure, providing for orders in behalf of an administrator of persons alleged to have property or knowledge of property belonging to the estate of a deceased person do not contemplate proceedings of a criminal nature and the constitutional provision protecting persons from testifying against themselves is not applicable. *Levy v. Superior Court*, 105 Cal. 606; but see dissenting opinion pp. 616, 619.

The right to be represented by counsel is secured to a lawyer charged with crime, the

same as to any other person. *People v. Napthaly*, 105 Cal. 643.

The proceeding under section 772, Penal Code for summary removal of public officers is in its nature a criminal proceeding, and the constitutional protection that no one shall be required to become a witness against himself is applicable. *Thurston v. Clark*, 107 Cal. 288.

Referring to the second subdivision of section 1382 of the Penal Code, it is held that the provision for dismissal of a criminal prosecution is imperative where the accused has not been charged by indictment or information within thirty days after being held to answer, unless good cause be shown for the delay. *People v. Wickham*, 113 Cal. 283.

The act of March 23, 1874 [Stats. p. 528], authorizing one spouse, under certain circumstances, to mortgage or sell the homestead is a remedial law intended to enforce the legal obligation of a hopelessly insane husband or wife to apply his or her property, in case of necessity, to the support of the same husband or wife and their minor children, and is not in conflict with the constitutional provision prohibiting the taking of private property without due process of law. The statute provides a due process. *Rider v. Regan*, 114 Cal. 667.

A plea of once in jeopardy must be interposed before or at the time of the second trial. A defendant may not sit idly by and be tried a second time and then in arrest of judgment or on appeal set up this special plea. *People v. Bennett*, 114 Cal. 57.

A person charged with a public offense has a "right" to a speedy public trial, but under section 868 of the Penal Code he may waive "public" examination before the committing magistrate if he is willing to do so. *People v. Tarbox*, 115 Cal. 59.

Although it is not provided in express words that the judgment debtor should have notice of claims for wages under sections 1206, 1207 of the Code of Civil Procedure, yet the necessity of such notice is implied, and such notice is essential to the constitutionality of the law. Without such notice the debtor might be deprived of his property without "due process of law." In such cases notice to the officer (receiver in insolvency) is not equivalent to notice to the debtor. *Taylor v. Hill*, 115 Cal. 145.

If a person charged with an offense appears voluntarily and testifies before a grand jury by whom he is subsequently indicted, he cannot claim, by motion to set aside the indictment, the protection guaranteed by this section of the constitution, which is designed to prevent one testifying against himself under compulsion. *People v. Page*, 116 Cal. 392.

As respects enforcement of mechanics' lien against a threshing machine, the actual ownership of the property is an immaterial circumstance; and the one actually in possession under the actual owner is to be deemed, for the purposes of the statute, as the owner of the property. *Lambert v. Davis*, 116 Cal. 294.

*The deposition of an absent witness, taken*

at the preliminary examination in a case of homicide, may be used at the trial. [People v. Oiler, 66 Cal. 101.] People v. Chin Hane, 108 Cal. 607; also, People v. Caddy, 117 Cal. 10; People v. Sierp, 116 Cal. 250.

The act of March, 1891 [Stats. 1891, p. 288], to prevent the placing or keeping of married women in houses of prostitution is not violative of the constitutional rights of the husband. People v. Bosquit, 116 Cal. 77.

The legislature has no power to declare that a "reputed" owner can do any act which would create a lien upon a "real" owner's land (in matter of street assessments). Santa Cruz Rock etc. Co. v. Lyons, 117 Cal. 213.

SECTION 14. Private property shall not be taken or damaged for public use without just compensation having been first made to, or paid into court, for the owner, and no right of way shall be appropriated to the use of any corporation other than municipal until full compensation therefor be first made in money, or ascertained and paid into court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived, as in other civil cases in a court of record, as shall be prescribed by law.

Const. 1849, Art. I, last clause Sec. 8.

Where a culvert or drain is placed across a street in a city, sufficient for ordinary seasons, damage thereafter occasioned to adjoining property by reason of extraordinary flood which could not have been reasonably foreseen, does not give right of action for such damage, and does not constitute a taking or



damage to private property for public use within the purview of this clause of the constitution. *Los Angeles Cemetery Association v. City of L. A.*, 103 Cal. 461.

A municipal corporation is liable for such special consequential damage as an adjoining proprietor sustains over and above the common injury to the other abutters on the street, or the general public, caused by street improvement done by the city. *Reardon v. San Francisco*, 66 Cal. 492.

The rule prevailing under the former constitution that persons appointed or authorized by law to make or improve public streets are not answerable for consequential damages, if they act within their jurisdiction, and with care and skill, is changed under this provision that private property shall not be taken or damaged for public use without just compensation having been first made, and approving *Reardon v. San Francisco*, *supra*, judgment against the contractor for damages peculiar to the property of plaintiff, is affirmed. *De Long v. Warren*, 36 Pac. Rep. 1009. And see the suggestion of McKinstry, Judge, in concurring opinion in *Green v. State*, 73 Cal. 40. Compare *Butler v. Ashworth*, 102 Cal. 663. [Repair of sewer.]

Costs should be allowed owner who makes *bona fide* defense in proceedings to condemn land for street, notwithstanding section 1255, Code of Civil Procedure, provides that in such proceedings costs may be allowed or not, or

may be apportioned between the parties. *City and Co. S. F. v. Collins*, 98 Cal. 259.

An act to condemn land for widening Mission street in San Francisco [acts of 1863, Stats. p. 560; 1889, p. 70; 1863-4, p. 347; 1867-8, p. 555] and other street improvement acts; also section 19, article XI, constitution as adopted in 1879, are construed and, *Held*, defendant was not deprived of any right secured by section 14, article I. *City and Co. of S. F. v. Kiernan*, 98 Cal. 614.

In an action to condemn land for railway purposes, it is not proper to receive evidence to show that the land not taken will be benefited by the reason that the road would render crops raised on the land more accessible to market; and it is proper to admit evidence to show that the construction of the road would render it more difficult and expensive to irrigate the land not taken, although the land had never yet been under cultivation, and no system for the irrigation of it was yet under contemplation—the land being adapted to cultivation. Also, the court properly instructed the jury as follows: "In fixing the amount of damages to that portion of the tract of each defendant not sought to be condemned, which may accrue by reason of the running of the road through their premises, the jury must ascertain and fix the amount, irrespective of any benefit which may result to the defendants from the proposed railroad." *San Bernardino & E. Ry. v. Haven et als.*, 94 Cal. 489 (*affirming Pac. C. Ry. Co. v.*

Porter, 74 Cal. 261; *Muller v. Ry. Co.*, 83 Cal. 245. See also *S. J. etc. R. R. Co. v. Mayne*, 83 Cal. 569).

The question of the liability of a receiver of an insolvent street railway company properly belongs to the court by whom the receiver was appointed in the exercise of its jurisdiction in equity. The right of trial by jury as an absolute right does not extend to cases of equity jurisdiction. The right of a street railroad company to use tracks or roadway of another company already operating such railway in streets of a city, does not involve the taking of private property, nor any exercise of the right of eminent domain. When the first company accepted its franchise, it did so under the provisions of section 499, C. C., then in force, and thus with the understanding—in effect, express stipulation—that any other company might use the track jointly with itself. *Pac. Ry. Co. v. Wade*, 91 Cal. 454.

The right of eminent domain is inherent in the state, and is not conferred by the constitution, and may be delegated by the legislature to any corporation or individual who will comply with the terms upon which the right is given. *Moran v. Ross*, 79 Cal. 159. See same case, 79 Cal. 549.

If compensation has not been had in condemning land taken for a public use under the statute for such proceedings, it can be recovered in an action. *Bigelow v. City of Los Angeles*, 85 Cal. 614.

Section 1254, Code of Civil Procedure allow-

ing an adequate fund to be paid into court, whereupon the court may authorize the plaintiff, if already in possession, to continue therein, and if not, then to take possession of and use the property during the pendency of and until final determination of the litigation is not in violation of the constitution. *S. V. Water Works v. Drinkhouse*, 95 Cal. 220.

The value of a private road constructed by the owner of land sought to be condemned for a public road is proper to be considered in fixing the compensation he should receive when that is part of the land to be taken, and the fact that he will have the benefit of a public instead of a private road, should not be considered in reduction or as an offset of his damages. *Colusa Co. v. Hudson*, 85 Cal. 633.

In the exercise of the right of eminent domain, the value of the land is to be determined as of the time when it is taken, and not at the time of issuing the summons in the case. *Cal. So. R. R. Co. v. Colton L. & W. Co.*, 2 Pac. Rep. 38. See *Cal. So. R. R. Co. v. Kimball*, 61 Cal. 90.

The Code of Civil Procedure, section 1248, provides for ascertaining separately how much the land not sought to be condemned will be benefited by the improvement, and if the benefit shall be equal to the damage assessed under subdivision 2 of the section, the owner shall be allowed no compensation except the value of the portion taken, but if that benefit be less than the damage, the former shall *be deducted* from the latter, etc.

*Held*, so far as the constitution imposes upon the party seeking to condemn a greater burden than is provided for in section 1248, Code of Civil Procedure, it is confined to private corporations and not to individuals, and that individuals are entitled to the deduction provided for by the code. *Moran v. Ross*, 79 Cal. 549.

Lots conveyed by alcalde grant in San Francisco, and not dedicated to the public, cannot be taken for use as street without condemnation and compensation. *Spaulding v. Bradley*, 79 Cal. 449.

The value of the land to be taken is not to be determined by what it would bring at forced sale, but it is the price which the owner could realize within a reasonable time at private sale. And the value is not to be governed by what it would bring for purposes for which it has been theretofore used, but its present value for prospective purposes is to be taken. *San Diego Land, etc., Co. v. Neale*, 78 Cal. 63.

Under our former system the method of ascertaining the compensation was by means of commissioners, while now the compensation is to be found by a jury, or by the court if a jury is waived, but the question of ownership is as distinct from that of compensation as it was formerly. *San Diego Land, etc., Co. v. Neale*, 78 Cal. 63.

No right of way is allowed over a public street for any other use than that of a *municipal corporation*, save upon compensation as-

certained by a jury. *Weyl v. Sonoma V. R. R.*, 69 Cal. 203.

The mode and manner prescribed by law for taking private property for public use must be strictly pursued. *Lux v. Haggin*, 69 Cal. 301.

The value of the land sought to be condemned should be determined as of the date of the issuance of the summons. Section 1249 Code of Civil Procedure, so providing, is not unconstitutional. *Tehama County v. Bryan*, 68 Cal. 57.

In condemnation proceedings by a railroad company for right of way, the compensation to be awarded the owner must be ascertained, irrespective of any benefit that would accrue to the remainder of his land from the building of the road. *Pacific Coast Ry. Co. v. Porter*, 74 Cal. 261.

In an action to condemn a right of way for a railroad, the plaintiff was adjudged to pay \$11,954 as the cost of fences and cattle guards. Instead of paying the money, plaintiff gave bond, under section 1251 Code of Civil Procedure. The bond was signed by four sureties in the sum of six thousand dollars each. *Held*, insufficient, and that the court had no power to allow an amended bond to be filed after the expiration of thirty days from the entry of the judgment. *Cal. So. R. R. Co. v. S. P. R. R. Co.*, 65 Cal. 293. The place of trial in such actions is in the county where the land to be taken is situated. *Id.* 409, 394. While perhaps the court may allow a new trial on the question of damages *assessed*, the verdict of the jury upon

the assessment of the value of the property to be taken is in other respects conclusive. Same parties, 67 Cal. 62.

Section 2619 (prior to 1883) of the Political Code, declaring all roads used as such for a period of more than five years are highways, is in the nature of a statute of limitations, and is not unconstitutional. *Bolger v. Foss*, 65 Cal. 250.

Where an assessment for a reclamation district can only be enforced by suit, in which notice must be given to defendant, and he has the opportunity to be heard without restriction as to the defense he may interpose, the constitutional provision as to due process of law is not violated. *Reclamation Dist. No. 3 v. Goldman*, 65 Cal. 635.

The act of March 26, 1878 [Stats. p. 777], authorizing the common council of Santa Barbara to lay out, etc., any street, etc., is unconstitutional in that it does not provide for any notice at all addressed to any person or class of persons, or which would inform any particular person that, on failure of appearance, any burden would be imposed on him or his property. *Boorman v. Santa Barbara*, 65 Cal. 313.

The act of April 1, 1876 [Stats. p. 653], authorizing the city of Oakland to construct a bridge over estuary of San Antonio, and declaring that the costs should be assessed upon a certain specified district of lands therein declared to be benefited, and providing for a commission to make the apportionment of the *costs, to the lots of land designated by the act*

in proportion to the benefits, is not unconstitutional. *Pac. Bridge Co. v. Kirkham*, 64 Cal. 519.

Section 21 of the act of March 25, 1868 [Stats. p. 321], providing that whenever a petition shall be received by supervisors of Sutter county from persons in possession of more than half the acres of any specified portion of said county, asking to be set apart and erected into a levee district, said board shall at once erect such territory into a levee district, etc., provided, that it shall not be required to submit the question of tax to the vote of the people of any district so erected, is held unconstitutional--subjecting private property to be taken by means of taxation without just compensation, for there is no investigation or determination as to benefits provided for. *Moulton v. Parks*, 64 Cal. 166.

Section 1249 Code of Civil Procedure, which prescribes that for the purpose of assessing compensation and damages in certain cases, the right thereto shall be deemed to have accrued at the date of the summons, is not inconsistent with the constitution. And it does not seem that the right to construct a railroad on a street should first be obtained from the municipal authorities before bringing an action to condemn the interest of the owners of lands lying adjacent to the street. *Cal. So. R. R. Co. v. Kimball*, 61 Cal. 90.

The constitution provides for a proceeding in court in all cases where private property is to be taken *for a public use*, and repeals a



special law applicable to Santa Clara county, under which the supervisors of said county, in February, 1880, by a final order and judgment established and ordered to be opened a public road over private land. *Weber v. Supervisors*, 59 Cal. 265. This section is prohibitory and self-executing, *Id.*; and *Trahern v. Supervisors*, *Id.* 320.

When, in the exercise of the right of eminent domain, the state takes the property of a person, he has but one right—and that is given him by the constitution—the right to compensation before he is deprived of his property. The right to take his property in no sense depends upon any contract between him and the public. His assent is not required, and his protestations are of no avail, but his property cannot be taken until paid for. Prior to that, no lien is impressed upon his property by reason of any preliminary proceedings. Until the price is ascertained, the government is in no position to close the bargain; and when it is ascertained, if the sum is not satisfactory, the government may withdraw, and it is under no obligation to take the land if the price is not satisfactory. *Lamb v. Schottler*, 54 Cal. 319.

The public use ceases upon the vacation of a highway, and private property is not taken or damaged by such proceeding. If damage results therefrom, it is damage without injury. *Levee Dist. v. Farmer*, 101 Cal. 180–184.

The rights of abutting owners upon a public road which has not been dedicated by the

owners of the land, and in respect to which there are no contract rights, or trust obligations of the public, are not such property as under the constitution must be paid for upon vacation of the public road, and the provisions of the Political Code conferring power upon boards of supervisors to vacate public roads are not unconstitutional because not authorizing the boards to assess damages caused thereby to abutting owners, nor to provide compensation to them. *Levee District No. 9 v. Farmer*, 101 Cal. 181.

The street law of 1889 [Stats. p. 90], provides sufficient notice to owners, and is not unconstitutional. *Wulzen v. Supervisors*, 101 Cal. 19-20.

An ordinance of the board of supervisors of San Francisco to open and extend Market street to the ocean, and declaring that all the land within the exterior boundaries of the street as extended "is hereby condemned, appropriated, acquired, set apart, and taken for public use," is an exercise of judicial power, in so far as it purports to condemn the land, and to that extent, is in excess of the jurisdiction of the board. *Wulzen v. Board of Supervisors*, 101 Cal. 24.

An act authorizing the formation of a levee district, and for issuing bonds or contracting debt in the nature of lien upon lands, and which provides for a petition by owner of majority of acreage only, with no discretion in supervisors to deny the petition, provides for no notice *or protest or for change of proposed*

boundaries, is violative of fundamental principles of the constitution. *Brandenstein v. Hoke*, 101 Cal. 133. See also, *People v. Reclamation District No. 551*, 117 Cal. 117.

A mere infringement of the owner's personal pleasure or enjoyment, or merely rendering the property less desirable for certain purposes, or even causing personal annoyance or discomfort, does not constitute a damage for which compensation must be made. But the right of the owner of a city lot to the use of the street adjacent thereto is property which cannot be taken without compensation; and any act by which this right is impaired is to that extent a damage to his property. *Eachus v. L. A. Con. Ry. Co.*, 103 Cal. 616.

In an action to condemn a right of way, defendant received her costs upon the first trial, and *Held*, that under section 1254 Code of Civil Procedure, the costs of an unsuccessful attempt to obtain greater compensation by means of a new trial might be taxed against her. *L. A., etc., Ry. Co. v. Rumpp*, 104 Cal. 22.

A contractor upon a public work, who executes the work in a careful and proper manner, according to the plan, is not liable for consequential damage resulting from such work. Nor is a city liable where the damage is not the natural, immediate and certain consequence of the work. It is not incumbent on the city to provide for compensation where the damage is not the immediate, certain and natural consequence of the undertaking. *DeBaker v. Railway Co.*, 106 Cal. 283.

One community cannot be suppressed for the benefit of another. Rights of riparian owners and dwellers cannot be taken for public use without compensation. *People v. Elk River M. & L. Co.*, 107 Cal. 225.

The constitution of 1849 [Art. I, Sec. 8], provided that private property should not be taken for public use without just compensation, while the present constitution provides that it shall not be taken *or damaged* for public use without just compensation having been first made, etc. The word "damaged" is to be construed in its ordinary and proper sense, and embraces more than the direct taking. [Quoting from *Riordan v. San Francisco*, 66 Cal. 492.] *Tyler v. Tehama County*, 109 Cal. 622.

The owner of a lot abutting on a public street owns an easement in the street, which is property, independent of the ownership of the fee in the street, and independent of the public's right of way, and he cannot be deprived of this "property" by an authoritative "vacation" of the street, without compensation; and any act by which his right is impaired is to that extent a "damage" to his property. *Bigelow v. Ballerino*, 111 Cal. 560.

The legislature cannot authorize a public use which would deprive an owner of the "*beneficial*" use of his property, without providing also for just compensation therefor. *Rudel v. Los Angeles County*, 118 Cal. 288.

A law [Sec. 1191 C. C. P.], intended to give a *mechanics' lien* upon land by virtue of a

contract for street improvement, entered into with a "reputed" owner, who is not the "real" owner, is to that extent unconstitutional. *Santa Cruz Rock Pav. Co. v. Lyons*, 117 Cal. 214.

SECTION 15. No person shall be imprisoned for debt in any civil action, on mesne or final process, unless in cases of fraud, nor in civil actions for torts, except in cases of wilful injury to person or property and no person shall be imprisoned for a militia fine in time of peace.

Under sections 861, 865 Code of Civil Procedure, it must be proved to the satisfaction of the justice that there is a cause of action. An affidavit showing that an action has been commenced on an "alleged" indebtedness is not sufficient; and fraud in contracting the debt or other fraud mentioned in said sections, must also be shown in the affidavit by direct averment of facts constituting the fraud. *In re Vinich*, 86 Cal. 70.

SECTION 16. No bill of attainder, *ex post facto* law, or law impairing the obligation of contracts shall ever be passed.

Const. 1849, Art. I, Sec. 16.

A law fixing the punishment for murder and which by amendment repeals a former law which prescribed a different punishment for the same offense, is *ex post facto* as to a murder committed while the former law was in force, and a person convicted since the enactment of the latter law, of murder committed while the former was in force, cannot be punished in the manner provided by the latter

but section 329 of the Political Code is a saving clause in the body of the general law of the state, and is sufficient to authorize the punishment to be inflicted which was prescribed by law at the time the offense was committed, where the amendatory act does not expressly declare the intention of the legislature to bar such punishment. *People v. McNulty*, 93 Cal. 427.

The city of Sacramento was incorporated by act of March 26, 1851 [Stats. p. 391], and provision was made that it might sue and be sued under its corporate name. Under provisions of acts of April 26, 1853 [Stats. p. 117], and act April 10, 1854 [Stats. p. 196], it issued bonds payable in 1874. Under subsequent incorporation act, May 1, 1858 [Stats. p. 267], the city and county were consolidated as successor of the city of Sacramento, and this act provided that such corporation should not be subject to suit, nor its property liable for debt. Again under act of April 25, 1863 [Stats. p. 15], the city was incorporated with the same boundaries as under the act of 1851, and provision made that it might be sued on any bond or contract thereafter made. *Held*, that the holder of bonds issued under acts of 1853 and 1854 might have sued the corporation at any time after the maturity of the bonds prior to such suit being barred by statute of limitations, and that the charter provisions to the effect that said corporation should not be subject to suit was void, so far as it attempted to *void said bonds, as impairing the obligation*

of contract. *Bates v. Gregory, et al.*, 89 Cal. 387.

An act of the legislature affecting the change of remedy, or the time within which it must be sought does not impair the obligation of a contract, provided an adequate and available remedy be provided. So held in regard to the amendment of section 1187 Code of Civil Procedure passed March 15, 1887. *Mil and Lumber Co v. Olmstead*, 85 Cal. 81.

The insolvent act of 1880 discharges debts contracted in 1878, and is not thus unconstitutional as impairing the obligation of contracts. *Porter v. Imus*, 79 Cal. 183.

Prior to amendment of March, 1885, section 3785 of Political Code did not require notice by purchaser at tax sale, of his intention to apply for a deed. *Held*, the amendment applied to all applications for deeds after it took effect, and such notice must be given by the holder of a tax sale certificate where the sale was made in February preceding the taking effect of the amendment. Said amendment did not impair the obligation of a contract. *Oulahan v. Sweeney*, 79 Cal. 537.

The provisions of the act of April 24, 1855 [Stats. p. 267], re-incorporating the city and county of Sacramento, for refunding the debt by issuing bonds and providing a fund to be raised by taxation to pay the bonds became a contract between the corporation and purchasers of the bonds, which could not be in any manner impaired by subsequent legislation. *Bates v. Porter*, 74 Cal. 224.

The legislature cannot, by amending a city charter, authorize payment of claims of a contractor for street work, to other persons than the contractor, without his consent, and where such payments would not have been authorized by the law in force at the time the contract was entered into. *McGee v. City of San Jose*, 68 Cal. 91.

The contract for grading Montgomery avenue required that the work should be completed in sixty days. The time expired before the work was completed, and subsequently the board of supervisors extended the time for completion. The act of the legislature of March 19, 1878 [Stats. p. 341], to ratify and confirm certain orders and resolutions of the supervisors, including the order extending time, *Held*, unconstitutional. The legislature by a subsequent act cannot give force or vitality to a contract that is dead. *Fanning v. Schammel*, 68 Cal. 428.

The repeal of a city charter does not impair the obligation of a contract made under the provisions of the charter prior to the repeal. *Myer v. Porter*, 65 Cal. 67.

A mortgage was executed in 1879 to secure payment of a promissory note in three years, and contained no special covenant as to payment of taxes. After the adoption of the present constitution, the mortgagor paid taxes to the amount of three hundred and ninety-five dollars which had been assessed against the mortgage interest, and in 1883 paid the mortgagee the full amount of note and interest,



less the said taxes. In an action to foreclose the mortgage for the three hundred and ninety five dollars, *Held*, plaintiff could not recover. Their was no contract impaired because there was no contract between the parties by which the mortgagor agreed to pay the taxes assessed under the new constitution [McCoppin v. McCartney, 60 Cal. 371.] Hay v. Hill, 65 Cal. 383.

Section 325 Code of Civil Procedure as amended in 1878, and providing that adverse possession of land for five years is ineffectual to establish title unless it is also shown that the land has been occupied and claimed during that period continuously and that the claimant has paid all taxes, etc., is not retroactive, hence, in an action tried after the amendment, but where adverse possession for five years prior to the amendment was established, it was error to require proof of payment of taxes. *Sharp v. Blankenship*, 59 Cal. 288.

The act of March 26, 1851 [Stats. p. 307], known as the "Water Lot Act," and defining the line of the water front of San Francisco, did not create a contract between the state and owners of water front lots, in the sense of irrevocably establishing the line of water front. One asserting such contract rights must make out a clear case, free from all reasonable ambiguity, and bring them fairly and fully within that clause of the federal constitution which prohibits a state from passing any law

impairing the obligation of contracts. *Floyd v. Blanding*, 54 Cal. 41.

Section 3788 of Political Code as amended in 1885, limiting and decreasing the time within which a purchaser at delinquent tax sale might enforce the execution of the tax deed is not unconstitutional. The tax sale does not create a contract entitling the purchaser to rest indefinitely upon the terms of the statute then in force respecting the time of his application for a deed. *Tuttle v. Block*, 104 Cal. 448.

The amendment of 1891 of section 172 of the Civil Code forbidding the husband to give away community property without the consent of the wife, cannot be construed retroactively so as to deprive the husband of his vested right to dispose of community property acquired prior to the amendment. *Spreckels v. Spreckels*, 116 Cal. 340.

The amendment of section 702 Code of Civil Procedure of 1895, reducing the amount to be paid on redemption of real estate under execution sale from two to one per cent, violates the obligation of contract of sale, where the sale took place prior to the amendment. *Teralta Land etc. Co. v. Shaffer*, 116 Cal. 523.

*Thresher v. Atchison*, 117 Cal. 74. Also the amendment of 1895 of section 3442 Civil Code, did not apply to transfers made by an insolvent debtor prior to the amendment. *Cook v. Cockins*, 117 Cal. 140.

Though the legislature *has* the power to give to statutes a *retrospective* operation, if they

are not *ex post facto*, and do not impair the obligation of contracts, or deprive any one of vested rights, yet it is to be presumed that no statute is intended to have any such effect, unless the contrary clearly appears, especially if to give the statute retrospective effect would work manifest injustice. *Piguaz v. Burnett*, 119 Cal, 160.

SECTION 17 [Art I]. Foreigners of the white race, or of African descent, eligible to become citizens of the United States under the naturalization laws thereof, while *bona fide* residents of this state shall have the same rights in respect to the acquisition, possession, enjoyment, transmission and inheritance of all property, other than real estate, as native born citizens; *provided*, that such aliens owning real estate at the time of the adoption of this amendment may remain such owners; *and provided further*, that the legislature may, by statute, provide for the disposition of real estate which shall hereafter be acquired by such aliens by descent or devise. [Amendment ratified at election Nov. 6, 1894.]

[Original section:]

SECTION 17. Foreigners of the white race or of African descent, eligible to become citizens of the United States under the naturalization laws thereof, while *bona fide* residents of this state, shall have the same rights in respect to the acquisition, possession, enjoyment, transmission and inheritance of property as native born citizens.

Const. 1849, Art. I, Sec. 17.

There is no provision of the constitution which prohibits the legislature from conferring the same rights of inheritance upon persons born in foreign countries and who have

never been residents here. Section 671, Civil Code, provides: "Any person, whether citizen or alien, may take, hold and dispose of property, real or personal, within this state;" and section 672: "If a non-resident alien takes by succession he must appear and claim the property within five years," etc. Section 4, article IX, of this constitution, does not limit the power of the legislature to declare that aliens may be heirs. [*Lyons v. State*, 67 Cal. 380; *People v. Rogers*, 13 Cal. 160; *Estate of Billings*, 64 Cal. 427; same estate, 65 Cal. 593.] *State v. Smith*, 70 Cal. 153.

A non-resident alien may assign property in this state inherited by him, and the assignee is entitled to appear and claim the property. *Carraseo v. State*, 67 Cal. 385.

SECTION 18. Neither slavery nor involuntary servitude, unless for the punishment of crime, shall ever be tolerated in this state.

Const. 1849, Art. I, Sec. 18.

SECTION 19. The right of the people to be secure in their persons, houses, papers and effects against unreasonable seizures and searches, shall not be violated; and no warrant shall issue but on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized.

Const. 1849, Art. I, Sec. 19.

The legislature has power to authorize a person to be searched for lottery tickets. Sections 1523, 1524, Penal Code. *Collins v. Lean*, 68 Cal. 284.

*Sections 1459 and 1460 of the Code of Civil*

Procedure, providing for orders in behalf of an administrator against persons alleged to have property, or knowledge of property belonging to the estate of a deceased person, do not violate the provisions of the constitution protecting persons against unreasonable search, etc. *Levy v. Superior Court*, 105 Cal. 606.

SECTION 20. Treason against the state shall consist only in levying war against it, adhering to its enemies, or giving them aid and comfort. No person shall be convicted of treason unless on the evidence of two witnesses to the same overt act, or confession in open court.

Const. 1849, Art I, Sec. 20.

The word "convicted" as used in this constitution and numerous sections of the code means a finding that the accused is guilty either by a verdict of a jury or by some other mode mentioned in section 689, Penal Code. *Ex parte Brown*, 68 Cal. 177.

SECTION 21. No special privileges or immunities shall ever be granted which may not be altered, revoked or repealed by the legislature; nor shall any citizen, or class of citizens, be granted privileges or immunities which, upon the same terms, shall not be granted to all citizens.

The sufficiency of a complaint in an action to recover taxes from a railroad company must be tested by the provisions of Code of Civil Procedure relating to pleadings, and not by sections 3668-3670, Political Code, which attempt to declare what will be a sufficient complaint for such purpose. See notes under

subdivisions 3, 10, 13, 20, section 25, article IV. *People v. C. P. R. R.*, 83 Cal. 393.

An ordinance of a board of supervisors purporting to levy license tax upon all sheep pastured in the county, but exempting therefrom those persons who list their sheep as taxable property in the county, and pay taxes on them as such, is in effect a tax upon property, although denominated a license tax on business, and is a discrimination against the property of the citizen of this state, which is not applied to others of his class, and grants an immunity to the same class of persons in the county adopting such ordinance which is not given to one falling within the provisions of the ordinance. The owner of the sheep pastured in one county, but upon which he pays taxes in another county where he resides, is discriminated against. *Lassen Co. v. Cone*, 72 Cal. 387.

An ordinance of the supervisors of Mono county imposing a license tax at the rate of fifty dollars per one thousand head of sheep upon the business of pasturing and herding sheep in that county, and declaring a violation of the ordinance a misdemeanor, held valid. *Ex parte Mirande*, 73 Cal. 365, distinguishing *Lassen Co. v. Cone*, *supra*.

An ordinance of the city of Modesto prohibiting wash houses or laundries, except in a specified portion of the city, being general in its character, confers no special immunity or privilege, and is valid. *In re Hung Kie*, 69 Cal. 149.

An ordinance of the city and county of San Francisco requiring persons conducting a laundry or wash house within certain prescribed limits to procure a certificate from the health office that proper drainage was provided for, and a certificate from the fire wardens that the heating appliances were in safe condition, and prohibiting washing or ironing from ten o'clock P. M. to 6 o'clock A. M., and on Sunday. *Held*, constitutional. *Ex parte* Moynier, 65 Cal. 33.

Sections 300, 301, Penal Code, as they existed in 1881, prohibiting the keeping open of saloons, etc., on Sunday, are not unconstitutional as granting special privileges or immunities. *Ex parte* Koser, 60 Cal. 177, McKinstry, Sharpstein and Ross, JJ., dissenting.

The act of March 11, 1889 [Stats. pp. 100-106], establishing the Preston School of Industry, is not unconstitutional in authorizing juvenile offenders to be sent there for a longer period than the term provided by the general law for imprisonment of adults for similar offenses. The objects of the act are reformation and education. *Ex parte* Nichols, 110 Cal. 652.

This section is referred to in discussing section 310½ of the Penal Code, as enacted in 1895 [Stats. p. 247, Palm Ed.], requiring barber shops to be closed after 12 o'clock M. on Sundays and holidays, in *Ex parte* Jentzsch, 112 Cal. 470.

A city ordinance requiring a quarterly license of fifty dollars of persons selling differ-

ent articles of apparel, cutlery, groceries, etc., not at a regular place of business and to persons not regularly engaged in and carrying on such lines of business, is within the license taxing power of the municipality, and is not invalid by reason of the rate of license being greater than that required of persons conducting the same lines of business at a regular place of business in the city. *Ex parte Haskell*, 112 Cal. 415.

Section 2853 of the Political Code, providing that "No toll-bridge or ferry must be established within one mile immediately above or below a regularly established ferry or toll-bridge, is not in conflict with the constitutional provision prohibiting the granting of special privileges or immunities, nor with subdivision 19 of section 25 of article IV, prohibiting special laws granting special privileges or immunities; nor with subdivision 25 of said section 25. *Fortain v. Smith*, 114 Cal. 494.

SECTION 22. The provisions of this constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise.

See *Dougherty v. Austin*, 94 Cal. 608, as to sections 5-9, article XI. *People v. Parks*, 58 Cal. 624, as to section 24, article IV.

This section, as a rule of construction, applies to all sections of the constitution alike. *Ewing v. Oroville M. Co.*, 56 Cal. 649. The following cases may also be consulted: *People v. C. P. R. R. Co.*, 83 *Id.* 403; *Davies v.*



City of L. A., 86 *Id.* 50. The word "may" in section 16, article XII, expressly renders the section permissive. *Nat. Bank v. Superior Court*, 83 *Id.* 494; *Oakland Pav. Co. v. Hilton*, 69 *Id.* 492, 512. *Ex parte Wolters*, 65 *Id.* 271; *Matter of Maguire*, 57 *Id.* 609.

The constitution is mandatory and prohibitory in the matter of the passage of special laws. [Sec. 11, Art. I; Sec. 25, Art. IV; Sec. 5, Art. XI.] *Bruch v. Colombet*, 104 Cal. 351.

The constitutional provision as to classification of counties is not merely permissive. It was unnecessary to give the legislature "permission" to classify; it would have that power anyway, unless it was expressly withheld. The mode designated by the constitution is mandatory, and is the only one contemplated for the fixing of official compensation. *Dwyer v. Parker*, 115 Cal. 546.

SECTION 23. This enumeration of rights shall not be construed to impair or deny others retained by the people.

Const. 1849, Art. I, Sec. 21.

SECTION 24. No property qualification shall ever be required for any person to vote or hold office.

The fact that owners of lands in irrigation districts are non-residents of the district, and that the residents need not own land to entitle them to vote in elections affecting the organization, etc., of the district, is of no constitutional consequence. No property qualification can be required, and only those who

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are residents of the district can, by the constitution, be permitted to vote at any election. It is no more than exists in every popular vote which involves the creation of a municipal debt or the creation of a municipal organization. *In re Madera Ir. Dist.*, 92 Cal. 321.

Reclamation districts are considered as not being municipal corporations, and the property qualification required for participation therein is not unconstitutional. There are no "electors" of these districts, and the right of appointment of persons to conduct the improvement is not unusual and does not constitute an exercise of the elective franchise. *People v. Reclamation Dist.*, 117 Cal. 123.

## ARTICLE II.

### RIGHT OF SUFFRAGE.

SECTION 1. Every native male citizen of the United States, every male person who shall have acquired the rights of citizenship under or by virtue of the treaty of Queretaro, and every male naturalized citizen thereof, who shall have become such ninety days prior to any election, of the age of twenty-one years, who shall have been resident of the state one year next preceding the election, and of the county in which he claims his vote ninety days, and in the election precinct thirty days, shall be entitled to vote at all elections which are now or may hereafter be authorized by law; *provided*, no native of China, no idiot, no insane person, no person convicted of any infamous crime, no person hereafter convicted of the embezzlement or misappropriation of public money, and no person who shall not be able to read the constitution in the English language and write his name, shall ever exercise the *privileges* of an elector in this state; *provided*, that the provisions of this amend-

ment relative to an educational qualification shall not apply to any person prevented by a physical disability from complying with its requisitions, nor to any person who now has the right to vote, nor to any person who shall be sixty years of age and upwards at the time this amendment shall take effect. [Amendment ratified at election Nov. 6, 1894.]

[Original section.]

SECTION 1. Every native male citizen of the United States, every male person who shall have acquired the rights of citizenship under or by virtue of the treaty of Queretaro, and every male naturalized citizen thereof, who shall have become such ninety days prior to any election, of the age of twenty-one years, who shall have been a resident of the state one year next preceding the election, and of the county in which he claims his vote ninety days, and in the election precinct thirty days, shall be entitled to vote at all elections which are now or may hereafter be authorized by law; *provided*, no native of China, no idiot, insane person, or person convicted of any infamous crime, and no person hereafter convicted of the embezzlement or misappropriation of public money shall ever exercise the privileges of an elector in this state.

Const. 1849, Art. II, Sec. 1.

Every male naturalized citizen thereof does not include a native of China, naturalized by a court of the state of New York. Natives of China are not entitled to naturalization under the laws of the United States, and a certificate to practice as an attorney-at-law, issued to such person in another state, will not entitle to admission in this state. *In re Hong Yen Chang*, 84 Cal. 163.

*Residence* in the election precinct for thirty days is just as essential a condition of the

right to vote as is a residence in the county for ninety days, or in the state for one year. *Russell v. McDowell*, 83 Cal. 70-81.

Persons can claim no constitutional right to vote in irrigation district matters on the ground of owning property there, nor urge such objection because only residents of the district are entitled to vote. *In re Madera Ir. Dist.*, 92 Cal. 321.

Sections 1083, 1084, Political Code, are in exact language of this section. An information or indictment in this language is sufficient. *People v. Neil*, 91 Cal. 466.

This section is referred to as illustrating the proposition that there are infamous offenses among misdemeanors over which inferior courts have no jurisdiction, in dissenting opinion of Paterson, J., in *Green v. Superior Court*, 78 Cal. 568.

The former constitution did not require any length of residence in a precinct, and subdivision 3 of section 1239, Political Code, ceased to be law upon adoption of present constitution. *Russell v. McDowell*, 83 Cal. 70.

To the contention that the law in regard to reclamation districts is void because it requires a property qualification for voters, it is held, that if these *quasi* corporations are municipal corporations the contention is unanswerable. [*In re Madera Ir. Dist.* 92 Cal. 320], but it is said there is a difference between irrigation districts, formed under the Wright act and these reclamation districts, and *that these latter are not municipal cor-*

porations; the district was part of a scheme for conducting a public improvement, and an analogy to a street improvement and other local improvements is suggested, where it has often been provided that the work shall only be done upon application of owners of a majority of the land, and if the owners were authorized to select a committee to superintend the work there would be no difference in the principle applicable. *People v. Reclamation Dist. No. 551*, 117 Cal. 123.

SECTION 2. Electors shall in all cases, except treason, felony, or breach of the peace, be privileged from arrest on the days of election, during their attendance at such election, going to and returning therefrom.

Const. 1849, Art. II, Sec. 2.

SECTION 3. No elector shall be obliged to perform militia duty on the day of election, except in time of war or public danger.

Const. 1849, Art. II, Sec. 3.

SECTION 4. For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, nor while engaged in the navigation of the waters of this state or of the United States, or of the high seas; nor while a student of any seminary of learning; nor while kept at any almshouse or other asylum, at public expense; nor while confined in any public prison.

Const. 1849, Art. II, Sec. 4.

It being conceded that the witness had all the requisite qualifications of an elector of the *Veteran's Home* precinct, except the intention

to abandon his former residence and to adopt and make the Veteran's Home precinct his place of residence, the controversy is still further reduced to the simple question of fact as to whether or not he went to the Veteran's Home and remained there with such intent. Upon this point the uncontradicted testimony of the witness is sufficient to establish the point thus made. *Stewart v. Keyser*, 105 Cal. 463.

SECTION 5. All elections by the people shall be by ballot or by such other method as may be prescribed by law; provided, that secrecy in voting be preserved. [*Ratified at election held November 3, 1896.*]  
[Original section.]

SECTION 5. All elections by the people shall be by ballot.

Const. 1849, Art. II, Sec. 6.

### ARTICLE III.

#### DISTRIBUTION OF POWERS.

SECTION 1. The powers of the government of the state of California shall be divided into three separate departments—the legislative, executive and judicial; and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any functions appertaining to either of the others, except as in this constitution expressly directed or permitted.

Const. 1849, Art. III, Sec 1.

The act of March 20, 1891 [Stats. p. 182], in so far as it authorizes the county superintendent of schools to furnish the estimates for a tax for high school purposes, is invalid. He is an *executive officer*, and such powers are

legislative in character, and should be vested in the supervisors. Approving *Hughes v. Ewing*, 93 Cal. 414; *McCabe v. Carpenter*, 102 Cal. 470 [Sec. 12, Art. XI.]

The power of appointment to office is not exclusively an executive function, but so far as not regulated by the constitution may be regulated by law, and if the law so prescribes, may be exercised by the legislature. Compare section 4, article XX. *People ex rel, Waterman v. Freeman*, 80 Cal. 233.

The act of 1889 [Stats. p. 69], creating a board of trustees with authority to select a building site and for erection thereon of buildings for home for feeble minded children, is not a delegation of legislative powers. *People v. Dunn*, 80 Cal. 211.

The act of March 21, 1885 [Stats. p. 218], amending section 274 Code of Civil Procedure, providing that the Superior Courts shall fix the salaries of the official reporters by an order entered upon the minutes of the court, such salaries to be paid out of the county treasuries as other salaries, is unconstitutional, because it imposes legislative functions upon the judiciary. The distinction between a legislative and judicial act is that the former establishes a rule governing and regulating in matters and transactions occurring after its passage, while the latter determines rights and obligations, whether in regard to persons or property, concerning matters or transactions which already exist and have transpired be-

fore the judicial power is invoked upon them. *Smith v. Strother*, 68 Cal. 194.

It has been held that the departments of which the constitution speaks and in respect to which it provides that no person employed in one shall be employed in either of the other two, are the departments of the state government, and not of the local governments. *People v. Provines*, 34 Cal. 520, reviews all the cases in this state up to that date upon this provision of the then existing constitution, and the conclusion reached in that case is adopted in *Staude v. Election Commissioners*, 61 Cal. 313.

The act of April 23, 1880 [Stats. p. 389], to promote drainage is void as containing a delegation of powers, and for other reasons. *People v. Parks*, 58 Cal. 624; *Doane v. Weil*, *Id.* 334, decided on authority of *People v. Parks*, *supra*.

This article relates to the state government and has no application to the local governments provided for in article XI of the constitution. [*People v. Provines*, 34 Cal. 520.] The power of delegation by local boards is confined to the discharge of duties ministerial in character. *Hoeley v. County of Orange*, 106 Cal. 424.

## ARTICLE IV.

### LEGISLATIVE DEPARTMENT.

SECTION 1. The legislative power of this state shall be vested in a senate and assembly, which shall be designated "*The legislature of the state of California*," and the enacting clause of every law



shall be as follows: "The people of the state of California, represented in senate and assembly, do enact as follows."

Const. 1849, Art. IV, Sec. 1.

This article is referred to in dissenting opinion of Justice Harrison in *McClatchy v. Superior Court*, 119 Cal. 428, a case of contempt for newspaper publication.

Statutory and constitutional provisions are subject to substantially the same rules of construction; the main object being in all cases to ascertain the intention of the law maker. There should be no such construction of language as would lead to absurd or impractical results, or compel a court to decree a thing substantially impossible, or which is in plain violation of fundamental principles of law or equity firmly established and universally recognized, unless such language absolutely requires such construction. *Jacobs v. Board of Supervisors*, 100 Cal. 121, cited in *Pollock v. San Diego*, 118 Cal. 598.

This section is referred to in *People v. C. P. R. R. Co.*, 83 Cal. 402, cited under section 25 of this article. Also referred to in *People v. Pendegast*, 96 *Id.* 291, cited under sections 4, 6, of this article.

The act of March 31, 1891 [Stats. p. 223], authorizing formation of sanitary districts, and to issue bonds for purposes thereof, is within police power of legislature, and the court will not assume that such act must include cities and towns, and is therefore a violation of constitution, article XI, sections 6,

11-13. *Woodward v. Fruitvale S. Dist.*, 99 Cal. 554, affirming *In re Madera Irr. Dist.*, 92 Cal. 296.

A repealing clause of unconstitutional act to have any effect must be clear and unequivocal. Repeal by implication cannot result from provision in subsequent act when that provision is itself devoid of constitutional force. In such act it is not sufficient to say that all acts inconsistent therewith are thereby repealed. *Orange Co. v. Harris*, 97 Cal. 600.

Section 2569 [Sub. 6], Political Code, attempts to empower the harbor commissioners to impose penalties, not exceeding five hundred dollars, for violations of its rules and regulations. In an action to recover such penalty, *Held*, the board of harbor commissioners is a creature of the statute, and purely an executive body, and the fixing and imposing of penalties are matters of which the legislature alone has cognizance. An act providing that if a person does or does not do a certain thing he shall pay a penalty of five hundred dollars is legislation. Such power cannot be delegated, excepting to municipal corporations. *Harbor Commissioners v. Redwood Co.*, 88 Cal. 491, distinguishing *Ex parte Cox*, 63 Cal. 21.

In so far as the act of March 4, 1881 [Stats. p. 51], relating to the board of viticultural commissioners attempts to confer upon the board power to make rules and declare a violation thereof a misdemeanor, it is unconsti-

tutional as a delegation of legislative power. *Ex parte Cox*, 63 Cal. 21.

The legislature had power to pass the insolvency act of 1876, but it could not go into operation while the United States bankrupt law remained in force. *Lewis v. County Clerk*, 55 Cal. 604; *Seattle C. & T. Co. v. Thomas*, 57 Cal. 197.

The legislature had power to direct, as in sections 3971, 3972, Political Code, that a county boundary shall be conclusive when approved by the surveyor general. The power conferred upon the surveyor general is ministerial. *People v. Boggs*, 56 Cal. 648.

The governor is not a part of the legislature, and a city charter may be approved by the legislature without approval by the governor. The legislature is one thing, and the law making power is another. *Brooks v. Fischer*, 79 Cal. 173. Compare *Fowler v. Pierce*, 2 Cal. 165, and *People v. Toal*, 85 *Id.* 333.

SECTION 2. The sessions of the legislature shall commence at 12 o'clock M. on the first Monday after the first day of January next succeeding the election of its members, and, after the election held in the year eighteen hundred and eighty shall be biennial, unless the governor shall, in the interim, convene the legislature by proclamation. No pay shall be allowed to members for a longer time than sixty days, except for the first session after the adoption of this constitution, for which they may be allowed pay for one hundred days. And no bill shall be introduced, in either house, after the expiration of ninety days from the commencement of

the first session, nor after fifty days after the commencement of each succeeding session, without the consent of two-thirds of the members thereof.

Const. 1849, Art. IV, Sec. 2.

*[An amendment to this section is proposed to be voted on at the general election November 8, 1898.]*

The question stated, but not decided, whether the journals of either branch of the legislature will be considered for the purpose of impeaching the validity of an act that is found duly enrolled and deposited with the secretary of state. There can be no presumption that the legislature has disregarded any constitutional requirements in the passage of a statute. If a bill has been introduced in either house within the first fifty days of the session, whatever is proper in the way of amendment is as admissible after the fifty days as before, and this will include whatever is germane to the bill. By the same rules a substitute that is germane to the subject of the bill may be adopted without violating the provision requiring bills to be introduced during the first fifty days of the session. Hale v. McGettigan, 114 Cal. 113.

SECTION 3. Members of the assembly shall be elected in the year eighteen hundred and seventy-nine at the time and in the manner now provided by law. The second election of members of the assembly, after the adoption of this constitution, shall be on the first Tuesday after the first Monday in November, eighteen hundred and eighty. Thereafter members of the assembly shall be chosen *biennially*, and their term of office shall be

two years; and each election shall be on the first Tuesday after the first Monday in November, unless otherwise ordered by the legislature.

Const. 1849, Art. IV, Sec. 3.

[The time for election of governor and other state officers is made to correspond with time for election of members of the assembly and senate. Sections 2, 17, article V. And special laws relating to election of county and township officers are prohibited by subdivision 9, of section 25, article IV.] The present constitution has changed the time of holding general elections from the first Wednesday in September to the first Tuesday after the first Monday in November. The intention of the legislature to make a corresponding change in the code in relation to the time of holding elections for county and township officers, is sufficiently manifest by the amendment of 1881, of section 4109 Political Code, and repealing sections 4024, 4027 and 4111 of the same code. *Treadwell v. Yolo County*, 62 Cal. 563.

The county government act of 1880 [Stats. p. 527], amending Political Code from 4000 to 4344, and adding new sections, and which included an amendment of section 4109, was declared unconstitutional in *Leonard v. January*, 56 Cal. 1. Various grounds of unconstitutionality were urged in the briefs of counsel, but the decision does not designate which or how many of such objections were well taken. As to the time for holding elections in counties, cities and counties, etc., the "Hartson

Act," of 1881 [Stats. p. 74], amending section 4109 and repealing certain other sections of the Political Code, causing said elections to occur at the same time as the general state election, was held constitutional in *Staudé v. Election commissioners*, 61 Cal. 313. Citing other cases bearing upon elections following the adoption of this constitution, including *Barton v. Kalloch*, 56 Cal. 95. In nearly all the decisions upon this subject and embracing sections 3, 4, 5, 6 of this article and others bearing upon these, there are dissenting opinions.

SECTION 4. Senators shall be chosen for the term of four years, at the same time and places as members of the assembly, and no person shall be a member of the senate or assembly who has not been a citizen and inhabitant of the state three years, and of the district for which he shall be chosen one year, next before his election.

Const. 1849, Art. IV, Sec. 4.

A person elected senator from two counties comprising the fortieth senatorial district continues to hold his office for the full term notwithstanding that during the term, by a reapportionment and re-districting of the state the fortieth district is created of one of those counties alone and the person elected was and continues to be a resident of the other county. *People ex rel Jennings v. Markham*, 96 Cal. 262; *People v. same, Id.* 289; *People v. Pendegast, Id.* 289; *McPherson v. Bartlett*, 65 *Id.* 577.

SECTION 5. The senate shall consist of forty members, and, the assembly of eighty members, to be elected by districts numbered as hereinafter provided. The seats of the twenty senators elected in the year eighteen hundred and eighty-two from the odd numbered districts shall be vacated at the expiration of the second year, so that one-half of the senators shall be elected every two years; *provided*, that all the senators elected at the first election under this constitution shall hold office for the term of three years.

Const. 1849, Art. IV, Sec. 5.

See *People v. Pendegast*, 96 Cal. 291, and cases collected under sections 1, 2, 4 and 6 of this article.

SECTION 6. For the purpose of choosing members of the legislature, the state shall be divided into forty senatorial and eighty assembly districts, as nearly equal in population as may be, and composed of contiguous territory, to be called senatorial and assembly districts. Each senatorial district shall choose one senator, and each assembly district shall choose one member of assembly. The senatorial districts shall be numbered from one to forty, inclusive, in numerical order, and the assembly districts shall be numbered from one to eighty, in the same order, commencing at the northern boundary of the state, and ending at the southern boundary thereof. In the formation of such districts, no county, or city and county, shall be divided, unless it contain sufficient population within itself to form two or more districts; nor shall a part of any county, or of any city and county, be united with any other county or city and county, in forming any district. The census taken under the direction of the congress of the United States, in the year one thousand eight hundred and eighty, and every ten years thereafter, shall be the basis of *fixing and adjusting* the legislative districts; and the *legislature* shall, at its first session after each census,

adjust such districts and re-apportion the representation so as to preserve them as near equal in population as may be. But in making such adjustment no persons who are not eligible to become citizens of the United States, under the naturalization laws, shall be counted as forming a part of the population of any district. Until such districting as herein provided for shall be made, senators and assemblymen shall be elected by the districts according to the apportionment now provided for by law.

Where a county is transferred, under a re-apportionment, from an odd to an even numbered senatorial district and so loses an opportunity of participating in an election, the senator elected in said even numbered district before the change, will hold office for the full term for which he was elected. People *ex rel* Snowball *v.* Pendegast, 96 Cal. 289.

It was the duty of the legislature of 1881, to have districted the state into forty senatorial districts; this not having been done it results, from the last clause of section 6, article IV, that the statute of 1874, by which the state was divided into twenty-nine senatorial districts, and according to which there were twenty senators from the districts designated by odd numbers, and twenty from the districts designated by even numbers, remains in force until the legislature shall establish the forty districts required by the constitution. The legislature of 1883, districted the state as required, but the act does not take effect until 1886. Twenty senators must therefore be elected in 1884 from the old *odd numbered* districts, to



hold office for two years only. *McPherson v. Bartlett*, 65 Cal. 577.

SECTION 7. Each house shall choose its officers, and judge of the qualifications, elections, and returns of its members.

Const. 1849, Art. IV, Sec. 8.

Commented on in *People v. Bingham*, 82 Cal. 238.

SECTION 8. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner, and under such penalties, as each house may provide.

Const. 1849, Art. IV, Sec. 9.

SECTION 9. Each house shall determine the rule of its proceeding, and may, with the concurrence of two-thirds of all the members, elected, expel a member.

Const. 1849, Art. IV, Sec. 10.

SECTION 10. Each house shall keep a journal of its proceedings, and publish the same, and the yeas and nays of the members of either house, on any question, shall, at the desire of any three members present, be entered on the journal.

Const. 1849, Art. IV, Sec. 11.

Commented on in *Oakland Pav. Co. v. Hilton*, 69 Cal. 479, cited under section 1, article XVIII.

When the journals do not affirmatively show that a particular thing was done, it will not be presumed that such thing was not done, and it is not essential to the validity of a statute that the journals should affirma-

tively show that every act required by the constitution to be done in the enactment of a law was in fact done. *People v. Dunn*, 80 Cal. 211, and cases there cited.

SECTION 11. Members of the legislature shall, in all cases, except treason, felony and breach of the peace, be privileged from arrest, and shall not be subject to any civil process during the session of the legislature, nor for fifteen days next before the commencement and after the termination of each session.

Const. 1849, Art. IV, Sec. 12.

SECTION 12. When vacancies occur in either house, the governor, or the person exercising the functions of the governor, shall issue writs of election to fill such vacancies.

Const. 1849, Art. IV, Sec. 13.

SECTION 13. The doors of each house shall be open, except on such occasions, as in the opinion of the house, may require secrecy.

Const. 1849, Art. IV, Sec. 14.

SECTION 14. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any place other than that in which they may be sitting. Nor shall the members of either house draw pay for any recess or adjournment for a longer time than three days.

Const. 1849, Art. IV, Sec. 15.

SECTION 15. No law shall be passed except by bill. Nor shall any bill be put upon its final passage until the same, with the amendments thereto, shall have been printed for the use of the members; nor shall any bill become a law unless the same be read on three several days in each house, unless, in case of urgency, two-thirds of the house where such bill *may be pending shall, by a vote of yeas and nays, dispense with this provision.* Any bill

may originate in either house, but may be amended or rejected by the other; and on the final passage of all bills they shall be read at length, and the vote shall be by yeas and nays upon each bill separately, and shall be entered on the journal; and no bill shall become a law without the concurrence of a majority of the members elected to each house.

Const. 1849, Art. IV, Sec. 16.

It is no objection that several bills were included in one resolution declaring that the bills specified presented cases of urgency. *People v. County of Glenn*, 100 Cal. 419.

Inferior Courts are required to be established in incorporated cities and towns by the legislature. [Art. VI, Sec. 1.] The legislature shall fix by law the powers, duties and responsibilities of the judges thereof. [Art. VI, Sec. 13.] No law shall be passed except by bill, and all laws passed shall be presented to the governor. [Art. IV, Secs. 15, 16.] Section 8, article XI, was not intended to authorize the creation of such courts by a city charter, approved by the majority of the members elected to both houses. Such charters must be consistent with and subject to the constitution and laws of this state. [Sec. 8, Art. XI.] The police court provided for in the charter of the city of Los Angeles, which charter was enacted by a resolution of both houses, and not by bill, is not lawfully constituted, and is without jurisdiction. The judges thereof are not *de facto* judges. *People v. Toal*, 85 Cal. 333.

Inferior courts are to be established by the legislature [Art. VI, Sec. 1], and their juris-

diction and powers are to be regulated by law. [Art. VI, Sec. 13.]

The constitution is not entirely consistent in the employment of words, for while it says no law shall be passed except by bill, and by section 8, article XI, it expressly provides for the enactment of city charters by approval of a majority of the members elected to each house. Such charters are laws, and a city police court may be created by such law. Dissenting opinion of Beatty, C. J., in *People v. Toal*, *supra*.

It is not necessary that the legislative journals should show affirmatively that a bill and its amendments were read on three several days, etc., and in the absence of a record not required by the constitution to be kept, it will be presumed that, in the passage of a bill, the legislature complied with all constitutional requirements. *People v. Dunn*, 80 Cal. 211.

[This point is raised in brief of counsel, but not directly passed on by the court, in *Leonard v. January*, 56 Cal. 1.]

The act of January 23, 1880 [Stats. p. 1], directing the state controller to transfer certain funds from the general to the school fund, was only read by title and enacting clause on the first two readings, and it is held that this was not a compliance with the constitutional provision, and that the act was not properly enacted. *Weill v. Kenfield*, 54 Cal. 111.

This section is referred to in concurring opinion of Fox, J., in *Davies v. City of Los*

Angeles, 86 Cal. 50, cited under section 6, article XI. Also in opinion by Thornton, J., in *Oakland Pav. Co. v. Hilton*, 69 Cal. 480, 512, considering an actual entry in full in the books as mandatory, and as excluding a mere reference to the matter.

The constitution does not require that a bill shall be read on three several days in each house after an amendment thereof. Concurring opinion in *People v. Thompson*, 67 Cal. 630.

In *Brooks v. Fischer*, 79 Cal. 173, it is held that a municipal charter framed and adopted under the provisions of section 8, article XI, constitution, may be approved by a concurrent resolution of both houses of the legislature, it being expressly held that the legislature is one thing and the law making power of the state another; but the legislature cannot enact laws in any other mode than by bill. A concurrent resolution approving the appointment by the governor and surveyor general, of John Mullan, as an agent and attorney to represent this state in Washington in the matter of claims of this state against the United States, is not a "law," and a contract entered into with Mullan in pursuance of such resolution is made "without express authority of law," and the state is not estopped from asserting its invalidity. *Mullan v. State*, 114 Cal. 578.

SECTION 16. Every bill which may have passed *the legislature* shall, before it becomes a law, be *presented* to the governor; if he approve it, he

shall sign it, but if not, he shall return it, with his objections, to the house in which it originated, which shall enter such objections upon the journal and proceed to reconsider it. If, after such reconsideration, it again pass both houses, by yeas and nays, two-thirds of the members elected to each house voting therefor, it shall become a law, notwithstanding the governor's objections. If any bill shall not be returned within ten days after it shall have been presented to him (Sundays excepted), the same shall become a law in like manner as if he had signed it, unless the legislature, by adjournment, prevents such return, in which case it shall not become a law, unless the governor, within ten days after such adjournment (Sundays excepted), shall sign and deposit the same in the office of the secretary of state, in which case it shall become a law in like manner as if it had been signed by him before adjournment. If any bill presented to the governor contains several items of appropriation of money, he may object to one or more items, while approving other portions of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items to which he objects, and the reasons therefor, and the appropriation so objected to shall not take effect unless passed over the governor's veto, as hereinbefore provided. If the legislature be in session, the governor shall transmit to the house in which the bill originated a copy of such statement, and the items so objected to shall be separately reconsidered in the same manner as bills which have been disapproved by the governor.

Const. 1849, Art. IV, Sec. 17.

A city charter approved by the majority of the members elected to both houses, and not passed as a bill and presented to the governor, is ineffectual as a mode of establishing inferior courts in cities. Such courts can only be established by law passed as a bill. *People v.*

Toal, 85 Cal. 333, Beatty, C. J., dissenting, and see commissioner's opinion, 23 Pac. Rep. 203. The section is also referred to generally in *Oakland Pav. Co. v. Hilton*, 69 Cal. 480; *Davies v. City of L. A.*, 86 *Id.* 50; *People v. Toal*, 85 *Id.* 337.

The governor may object to one or more items—not mandatory. *Nat. Bank v. Superior Court*, 83 Cal. 494. As to power of the court to go behind enrolled bill in order to determine whether it has been duly passed—in *People v. Dunn*, 80 Cal. 213.

It was conceded in argument that the governor had a discretion in the matter of signing bills which cannot be controlled by the courts. And *Held*, by the court that as the legislature adjourned without having returned to it by the governor the bill proposing amendments to sections 1, 8, 10, 11, of article XIII, and the governor not having signed the same, it never became a law, and the governor could not be compelled to issue his proclamation submitting said amendments to vote of the people. The legislature provides by bill for the submission, not the governor, and in this instance the bill never became a law. *Hatch v. Stoneman*, 66 Cal. 633.

SECTION 17. The assembly shall have the sole power of impeachment, and all impeachments shall be tried by the senate. When sitting for that purpose, the senators shall be upon oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the members elected.

Const. 1849, Art. IV, Sec. 18.

**SECTION 18.** The governor, lieutenant-governor, secretary of state, controller, treasurer, attorney-general, surveyor-general, chief justice and associate justices of the Supreme Court and judges of the Superior Courts, shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall extend only to removal from office and disqualification to hold any office of honor, trust or profit under the state; but the party convicted or acquitted shall nevertheless be liable to indictment, trial and punishment according to law. All other civil officers shall be tried for misdemeanor in office in such manner as the legislature may provide.

Const. 1849, Art IV, Sec. 19.

**SECTION 19.** No senator or member of assembly shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this state which shall have been created, or the emoluments of which have been increased, during such term, except such offices as may be filled by election by the people.

Const. 1849, Art. IV, Sec. 20.

The summary proceeding for the trial of civil officers for misdemeanor in office mentioned in section 772 Penal Code, and the manner of the trial without a jury, is within the power of the legislature. *Woods v. Varnum*, 85 Cal. 639.

**SECTION 20.** No person holding any lucrative office under the United States, or any other power, shall be eligible to any civil office of profit under this state; *provided*, that officers in the militia, who receive no annual salary, local officers, or postmasters whose compensation does not exceed five hundred dollars per annum, shall not be deemed to hold lucrative offices.

Const. 1849, Art. IV, Sec. 21.



The word eligible refers to the capacity to hold, as well as to be elected to office. A person who was duly elected to a civil office under the state, and who was eligible to be elected and hold the same, can no longer hold it, after he has accepted and become incumbent of a lucrative federal office. *People v. Leonard*, 73 Cal. 230. The section is referred to in construing section 4, article X, with reference to salary and expenses of state prison directors. *People v. Chapman*, 61 Cal. 263.

SECTION 21. No person convicted of the embezzlement or defalcation of the public funds of the United States, or of any state, or of any county or municipality therein, shall ever be eligible to any office of honor, trust, or profit under this state; and the legislature shall provide, by law, for the punishment of embezzlement or defalcation as a felony.

Const. 1849, Art. IV, Sec. 22.

SECTION 22. No money shall be drawn from the treasury but in consequence of appropriations made by law, and upon warrants duly drawn thereon by the controller, and no money shall ever be appropriated or drawn from the state treasury for the use or benefit of any corporation, association, asylum, hospital, or any other institution not under the exclusive management and control of the state as a state institution, nor shall any grant or donation of property ever be made thereto by the state; *provided*, that notwithstanding anything contained in this or any other section of this constitution, the legislature shall have the power to grant aid to institutions conducted for the support and maintenance of minor orphans, or half orphans, or abandoned children, or aged persons in indigent circumstances—such aid to be granted by a uniform rule, and proportioned to the number of inmates of such respective institutions; *provided further*, that

the state shall have at any time the right to inquire into the management of such institutions; *provided further*, that whenever any county, or city and county, or city or town shall provide for the support of minor orphans, or half orphans, or abandoned children, or aged persons in indigent circumstances, such county, city and county, city or town shall be entitled to receive the same pro rata appropriations as may be granted to such institutions under church or other control. An accurate statement of the receipts and expenditures of public moneys shall be attached to and published with the laws at every regular session of the legislature.

Const. 1849, Art. IV, Sec. 23.

The state possesses power to appropriate funds for the celebration of the anniversary of important events, and may confer such power on municipal corporations. The appropriation of \$300,000.00 to erect buildings and maintain exhibit at the world's fair Columbian exposition, and providing such appropriation be disbursed through a commission to be appointed by the governor, was not unconstitutional. *Daggett v. Colgan*, 92 Cal. 53.

This section is referred to in connection with the division of monies between Los Angeles and Orange counties, the monies being due under the provisions of the act of March 15, 1883 [Stats. p. 380], relating to appropriation of money for the support of aged and indigent persons. *Orange Co. v. Los Angeles Co.*, 114 Cal. 392.

This section is referred to as in substance a repetition of or in unison with previous legislation of this state in *Ingram v. Colgan*, 106 Cal. 116.

Where there is no other valid objection against an act of the legislature appropriating public money, it is sufficient for the act to state that officers thereby appointed shall receive a salary of two thousand dollars per annum, payable monthly out of any money in the state treasury not otherwise appropriated, without the language "there is hereby appropriated the sum," etc. When the legislature has clearly indicated its will as to the claim which is to be paid, and the fund from which it is to be paid, the constitutional requirement is satisfied, and no particular form of words is essential to make the appropriation valid. The act of 1889 [Stats. p. 421], providing for the appointment of three engineers as examining commissioners of rivers and harbors, and fixing a salary of two thousand four hundred dollars per annum for each, payable monthly, and traveling expenses, to be paid out of any money in the state treasury not otherwise appropriated, designates with sufficient clearness the amount to be paid, and the fund from which it shall be drawn, to constitute an appropriation. *Humbert v. Dunn*, 84 Cal. 57.

It is a general custom, but not universal in this state, in passing appropriation bills to employ the words "appropriated out of any money in the treasury not otherwise appropriated;" but neither in the constitution nor the codes is there any requirement that such *act shall* specify the fund out of which the *appropriation* shall be paid, nor is such spec-

ification usual. The act of March 14, 1889 [Stats. p. 149], appropriating the sum of \$100,000 for the support and maintenance of the mining bureau, is sufficiently specific, and is not void because it fails to designate on what fund the warrant is to be drawn. *Proll v. Dunn*, 80 Cal. 220.

The act of March 15, 1883 [Pen. Code, Sec. 1388], providing for suspension of judgment against criminal minors, and for their commitment to non-sectarian charitable institutions, and authorizing the court to direct the payment of a limited sum out of the county treasury of the county where such criminal proceedings are pending in favor of the institution to which the minor is so committed, is within the police powers of the state, and does not involve any unconstitutional appropriation. If the minor be sent to the county jail its expense would also be paid from the same treasury. *Boys' and Girls' Aid Society v. Reis*, 71 Cal. 627.

The act of 1883 [Stats. p. 380], providing for the sum of \$100 to be paid to private institutions maintaining as many as ten aged indigent persons, rendered the provisions of the constitution self executing as to such aid in favor of counties, cities, towns, etc.; and said cities, counties, towns, etc., because entitled to the same pro rata whether they maintained as many as ten such persons, or more, or whether they were maintained in one building or not. *County of Yolo v. Dunn*, 77 Cal. 133, following *San Francisco v. Dunn*, 69 Cal. 73.

Where money has been drawn from the treasury without authority of law it can be recovered back again. *People v. Chapman*, 61 Cal. 263.

SECTION 23. The members of the legislature shall receive for their services a per diem and mileage, to be fixed by law, and paid out of the public treasury; such per diem shall not exceed eight dollars, and such mileage shall not exceed ten cents per mile, and for contingent expenses not exceeding twenty-five dollars for each session. No increase in compensation or mileage shall take effect during the term for which the members of either house shall have been elected, and the pay of no attache shall be increased after he is elected or appointed.

Const. 1849, Art. IV, Sec. 24.

Constitutional and legislative provisions on this subject have been uniform in this state. *Ingram v. Colgan*, 106 Cal. 116.

SECTION 24. Every act shall embrace but one subject, which subject shall be expressed in its title. But if any subject shall be embraced in an act which shall not be expressed in its title, such act shall be void only as to so much thereof as shall not be expressed in its title. No law shall be revised or amended by a reference to its title; but in such case the act revised or section amended shall be re-enacted and published at length as revised or amended; and all laws of the state of California, and all official writings, and the executive, legislative and judicial proceedings shall be conducted, preserved and published in no other than the English language.

Const. 1849, Art. IV, Sec. 25.

The amendment of a statute does not have *the effect* of repealing it. A second amend-

ment to the same statute without referring to the first amendment operates as an amendment of the statute as it then exists. So held with reference to the amendment of the "Vrooman Act" of 1893 [Stats. p. 172], which refers to the original act of 1885, without referring to it as amended in 1889. *Fletcher v. Prather*, 102 Cal. 413.

And the amendment of section 2619, Political Code, by act of March 30, 1874 [Amended Codes, p. 116], by striking out the words "all roads used as such for a period of five years," repealed said clause as to the whole state, although the amending act provided in terms that the amendment should apply only to certain counties in the state. *Huffman v. Hall*, 102 Cal. 26.

The subject of the Bank Commissioners' act [Stats. 1877-8, p. 740, and amendment; Stats. 1887-8, p. 90] is sufficiently expressed in its title. It is not necessary that the title of the act should embrace an abstract of its contents. [*Abeel v. Clark*, 84 Cal. 226; *Ex parte Liddell*, 93 Cal. 633.] *People v. Superior Court*, 100 Cal. 105.

The act of March 14, 1889 [Stats. p. 168], providing for street improvements, and making the warrant, assessment, etc., *prima facie* evidence of the regularity and correctness of assessments, does not contain more than is expressed in its title. *Dowling v. Conniff*, 36 Pac. Rep. 1034, approving *McDonald v. Conniff*, 99 Cal. 386, and *Perine v. Erzgraber*, 102 Cal. 234.

The act of March 6, 1889 [Stats. p. 70], relating to opening, widening, etc., of streets expresses more in its title than is required by the constitution, and is a valid general law. *Davies v. City of Los Angeles*, 86 Cal. 43.

The county government act, 1883 [Stats. p. 300], sufficiently expresses subject in its title. *Orange Co. v. Harris*, 97 Cal. 600.

The title of the county government act of 1883 [Stats. p. 299], "to establish a uniform system of county and township government," embraces but one subject, and that subject is sufficiently expressed in the title. *Longan v. County of Solano*, 65 Cal. 122.

The point was raised in *Leonard v. January*, 56 Cal. 1, that the title of the act of April 27, 1880 [Stats. p. 527], known as the county government act, amending and repealing section 4000 and others of the Political Code, did not express the subject. Other objections were also made, and the decision does not indicate whether all the objections raised, or which of them were sufficient, but the act was declared unconstitutional.

There is but one subject expressed in the title of the act of March 11, 1889 [Stats. p. 111], entitled "An act to establish a state reform school for juvenile offenders, and to make an appropriation therefor," and providing for the committal to such school of any boy or girl between the ages of ten and sixteen, who has been convicted of an offense *punishable* by imprisonment in the county *jail or penitentiary*, and for offenses *punish-*

ble by imprisonment in the county jail, giving the court discretion to commit the offender to such jail. And although such act could have been enacted as an amendment to the Penal Code, it is not void. *Ex parte Liddell*, 93 Cal. 633.

An act entitled "An act amendatory of an act for the better protection of stockholders in corporations formed under the laws of the state of California, for the purpose of carrying on and conducting the business of mining" [Stats. 1874, p. 866], required monthly itemized accounts or balance sheets to be posted by the directors. *Held*, the subject was sufficiently expressed in its title. *Francais v. Somps*, 92 Cal. 503. Citing *People v. Parvin*, 74 Cal. 552.

Information charging defendant with having in his possession a lottery ticket, and setting out a copy thereof in Chinese characters, without a translation or allegation of the meaning in English, is defective in substance. *People v. Ah Sum*, 92 Cal. 648.

Section cited on construction of statute in *Donlon v. Jewett*, 88 Cal. 534.

The statute of 1889 [Stats. p. 32], providing for a "general" vaccination in the state, and which, in the body thereof related only to the vaccination of persons attending or desiring to attend the public schools, is not local or special because applicable to a class of persons, and the subject thereof is sufficiently expressed in its title. *Abeel v. Clark*, 84 Cal. 226.



The provision about amending or revising a law by reference to its title applies clearly to acts revisory or amendatory of former acts; it does not apply to an independent act. When two independent acts are incurably inconsistent, the latter will prevail. *Pennie v. Reis*, 80 Cal. 266.

The title of the act of March 7, 1887 [Stats. p. 46], to prohibit the sophistication and adulteration of wine and to prevent fraud in the manufacture and sale thereof, embraces but one subject. However numerous the sections of an act may be, if they can be fairly considered as falling within the subject matter of the legislation, or as proper methods for the attainment of the end sought by the act, there is no conflict with the constitutional provisions. *Ex parte Kohler*, 74 Cal. 38.

The act of April 15, 1880 [Stats. p. 268]. "to amend section 3481 of the Political Code" sufficiently expresses the subject of the act in the title. *People v. Parvin*, 74 Cal. 549.

The acts of March 23, 1880 [Stats. p. 34], to amend certain sections of the Political Code, relating to revenue, sufficiently expresses the subject in its title. A title expressing the object of an act to be to "amend section ——" of a named code, "relating to" a particular object treated of in the body of the act is a compliance with the constitutional requirement. *S. F. & N. P. R. R. v. State Board of Equalization*, 60 Cal. 12.

*The act of April 23, 1880 [Stats. p. 389], to promote drainage embraces subjects not ex-*

pressed in its title. The storage of debris from "mining and other operations" seems to be the paramount object of the act, to promote drainage the subordinate. Formerly this provision was construed to be directory. [Washington v. Page, 4 Cal. 388.] It is now mandatory. [Sec. 22, Art. I, Const.] The act is also local by reason of the provision in section 24 thereof, requiring all money raised under the act to be applied to the construction of dams for impounding debris from the mines specified and rectification of certain river channels. [Sec. 25, Art. IV, Const.] It is further unconstitutional as containing a delegation of power. [Art. III and Sec. 12, Art. XI, Const.] People v. Parks, 58 Cal. 624, see concurring and dissenting opinions. Doane v. Weil, *Id.* 334, decided on authority of People v. Parks, *supra*.

The act of April 6, 1880 [Stats. p. 313], for the refunding of county indebtedness, although it adds five new sections to the Political Code, is an independent statute, and is in no way unconstitutional. University of Cal. v. Bernard, 57 Cal. 612.

Construing the object of the act of April 16, 1880 [Stats. p. 385], entitled "an act providing for appeals from orders forming reclamation or swamp land districts," etc., to be to provide for original and not appellate proceedings, it may be admitted (though not decided) that the title which states the object of the act to be to provide *for appeals*, correctly expresses *the object found by construction in the body*

of the act, not to be to provide for appeals. Bixler's Appeal, 59 Cal. 550.

As to any subject embraced in the act and not expressed in its title, the act is void. Wood v. Election Commissioners, 58 Cal. 561, 565.

The act of April 2, 1880 [Stats. p. 105], commonly known as the "Traylor Act," is not a re-enactment of section 1617, as amended, of Political Code, and is not an amendment of the said code, and its subject is not expressed in its title. Earle v. Board of Education, 55 Cal. 489.

The provision of the former constitution that a law should embrace but one object which should be expressed in its title, was merely directory. [Washington v. Page, 4 Cal. 388; Pierpont v. Crouch, 10 *Id.* 315.] San Francisco v. S. V. W. W., 54 Cal. 571.

The prohibition against local or special laws only applies to prospective legislation. The act of March 25, 1874 [Stats. p. 614], defining powers and duties of the state board of education of Nevada school district was valid when enacted, although section 159, Political Code, provided that the number of school trustees "except where city boards are otherwise authorized by law, shall be three." The constitution of 1849 did not prohibit local or special legislation. [Meade v. Watson, 67 Cal. 591; *Ex parte* Burke, 59 Cal. 6.] Nevada School Dist. v. Shoecraft, 88 Cal. 372.

Section 300 of Penal Code, as adopted in 1872, (Sunday law) was not a special law,

nor was it otherwise unconstitutional. *Ex parte Burke*, 59 Cal. 6.

The legislature has the power to determine the number of justices of the peace to be elected in incorporated cities. [Article VI, section 11.] There is no limitation of this power in article XI, nor section 25, article IV. *Bishop v. City of Oakland*, 58 Cal. 572.

The act of April 16, 1880 [Stats. p. 313], for the funding of county indebtedness is a general law and is not special legislation. Statutes should not be declared unconstitutional unless there is a clear repugnance between the act and the constitution. *University of Cal. v. Bernard*, 57 Cal. 612.

When a section of the code is "amended to read as follows," and the amended section is published at length, without any saving clause continuing the original section in force for any purpose or to any extent, the effect is to repeal the original section, and it ceases to have any statutory force. *Huffman v. Hall*, 102 Cal. 31.

In the absence of such a constitutional provision as this, a section of an act might have been amended in one of four ways, without disturbing the force of the words not stricken out but the objection to such mode is that it tends to confusion and uncertainty, and this provision of the constitution was intended to prevent such uncertainty or confusion. *Fletcher v. Prather*, 102 Cal. 418.

The statute providing that the warrant, assessment and diagram prepared in matter of

street improvements shall be *prima facie* evidence of the regularity and correctness of the assessment, in an action to recover for the assessment is not unconstitutional, and such evidence will support a judgment where defendant offers no evidence. *Dowling v. Conniff*, 103 Cal. 78.

The title of the act of April 1, 1878 [Stats. pp. 969, 986], "to create the office of commissioner of transportation" etc., sufficiently expresses the scope and subject of the act. *Gieseke v. County of San Joaquin*, 109 Cal. 490.

The act of March 23, 1893 [Stats. p. 288], providing for sale of franchises in municipalities "and relative to granting franchises," expresses sufficient in its title to embrace the issuance and sale of franchises by counties. *Thompson v. Board of Supervisors, Alameda Co.*, 111 Cal. 554.

The provision requiring legislative bills to embrace but one subject, "which subject shall be expressed in its title," was not intended to, and does not apply to municipal ordinances. *Ex parte Haskell*, 112 Cal. 415-421.

It is not intended that the title of an act should disclose all the details of the act; it is sufficient if it intelligibly refers to the subject to which the act applies, or which is affected by it. *Hellman v. Shoulters*, 114 Cal. 136.

The act of March 17, 1891 [Stats. p. 116], purporting to amend the so called Vrooman act, by adding other sections thereto, was not *in fact* an amendment of the former act, or

at most, only amended the former act by implication, and it cannot be held that amendments by implication are within the constitutional requirement of section 24, article IV. *Hellman v. Shoulters*, 114 Cal. 139-149.

The act of March 28, 1895, [Stats. p. 267] to establish the fees of county, township and other officers, and of jurors and witness, so far as effects the provision requiring that at the time of filing the inventory in probate cases an additional fee shall be demanded in estates for each one thousand dollars in excess of three thousand dollars, is unconstitutional as not being germane to the object expressed in the title of the act. *Fatjo v. Pfister*, 117 Cal. 86.

SECTION 25. The legislature shall not pass local or special laws in any of the following enumerated cases, that is to say:

FIRST. Regulating the jurisdiction and duties of justices of the peace, police judges and of constables.

SECOND. For the punishment of crimes and misdemeanors.

THIRD. Regulating the practice of courts of justice.

FOURTH. Providing for changing the venue in civil or criminal actions.

FIFTH. Granting divorces.

SIXTH. Changing the names of persons or places.

SEVENTH. Authorizing the laying out, opening, altering, maintaining, or vacating roads, highways, streets, alleys, town plats, parks, cemeteries, graveyards, or public grounds not owned by the state.

EIGHTH. *Summoning and impanneling grand and petit juries, and providing for their compensation.*

**NINTH.** Regulating county and township business, or the election of county and township officers.

**TENTH.** For the assessment or collection of taxes.

**ELEVENTH.** Providing for conducting elections, or designating the places of voting, except on the organization of new counties.

**TWELFTH.** Affecting estates of deceased persons, minors, or other persons under legal disabilities.

**THIRTEENTH.** Extending the time for the collection of taxes.

**FOURTEENTH.** Giving effect to invalid deeds, wills or other instruments.

**FIFTEENTH.** Refunding money paid into the state treasury.

**SIXTEENTH.** Releasing or extinguishing, in whole or in part the indebtedness, liability, or obligation of any corporation or person to this state, or to any municipal corporation therein.

**SEVENTEENTH.** Declaring any person of age, or authorizing any minor to sell, lease or encumber his or her property.

**EIGHTEENTH.** Legalizing, except as against the state, the unauthorized or invalid act of any officer.

**NINETEENTH.** Granting to any corporation, association or individual any special or exclusive right, privilege or immunity.

**TWENTIETH.** Exempting property from taxation.

**TWENTY-FIRST.** Changing county seats.

**TWENTY-SECOND.** Restoring to citizenship persons convicted of infamous crimes.

**TWENTY-THIRD.** Regulating the rate of interest on money.

**TWENTY-FOURTH.** Authorizing the creation, extension or impairing of liens.

**TWENTY-FIFTH.** Chartering or licensing ferries, bridges or roads.

**TWENTY-SIXTH.** Remitting fines, penalties or forfeitures.

**TWENTY-SEVENTH.** Providing for the management of common schools.

**TWENTY-EIGHTH.** Creating offices, or prescribing the powers and duties of officers in counties cities, cities and counties, townships, election or school districts.

**TWENTY-NINTH.** Affecting the fees or salary of any officer.

**THIRTIETH.** Changing the law of descent or succession.

**THIRTY-FIRST.** Authorizing the adoption or legitimation of children.

**THIRTY-SECOND.** For limitation of civil or criminal actions.

**THIRTY-THIRD.** In all other cases where a general law can be made applicable.

**THE SECTION GENERALLY.** A tax sale made under a local statute prior to the adoption of this constitution is not void on the ground that such law contravenes the provisions of section 25, article IV, of this constitution; *Rollins v. Wright*, 93 Cal. 395.

The mode of exercising the power of eminent domain is susceptible of being prescribed and governed by general law applicable to all persons alike. While the legislature is authorized to classify municipal corporations for the purpose of incorporation and organization, the mode of exercising the right of eminent domain must apply to all alike. It is unconstitutional to discriminate by applying conditions for the exercise of this right to cities of fifth and sixth classes, which are not made applicable to all classes. *City of Pasadena v. Stimson*, 91 Cal. 238.

It is clearly the intention to emancipate municipal governments from the authority and control *formerly exercised* over them by the



legislature, and this is the more apparent from the fact that a charter framed by freeholders and ratified by the people cannot be amended by the legislature. [Secs. 8, 13, 14, Art. XI; Sec. 25, Art. IV.] *People v. Hoge*, 55 Cal. 612, 618.

The provision of the county government act of 1893 [Stats. p. 346], requiring the board of supervisors of a county from which territory has been taken in forming a new county to fix by order the class to which such county has been reduced, is a general law applicable to all counties from which territory may be taken in creating new counties, and is therefore not prohibited by the constitution. *Kumler v. Board of Supervisors*, 103 Cal. 395.

The term "system" itself imports a unity of purpose as well as an entirety of operation, and this section is cited in connection with section 5, article XI, to the effect that section 1645 of Political Code, as amended in 1893, which provides that in cities having a board of education the city treasurer is to have the custody of the state and county school moneys, was unconstitutional as special legislation. *Bruch v. Colombet*, 104 Cal. 350.

Sections 3668 to 3670 of the Political Code are held not to contravene subdivision 10, nor any provision of section 25 of article IV of the constitution. The distinction between a special and a general law may not be capable of being formulated in a definition which will be exhaustive and applicable to every case. *Each particular case presented may best be*

considered by taking into view the purpose and character of the law, as well as the individuals upon which it is to operate. It is not required that all laws passed by the legislature shall have a uniform operation in every part of the state. Nor does the constitution prohibit legislation for different classes of citizens. *People v. C. P. R. R. Co.*, 105 Cal. 584. See also *Levy v. Superior Court*, 105 Cal. 616.

Section 410 of the Code of Civil Procedure is not "special" or prohibited legislation in respect that it authorizes service of summons by persons other than the sheriff, nor does it conflict with section 4175 of the Political Code nor the corresponding provisions of the county government act. *Hibernia S. & L. Society, v. Clarke*, 110 Cal. 28.

The act of March 15, 1883 [Stats. p. 370], and amendatory act of 1893 [Stats. p. 59], relating to funding of municipal indebtedness, are in conflict with the constitutional provisions prohibiting special legislation, for the reason that such acts apply only to cities other than of the first class. *City of Los Angeles v. Teed*, 112 Cal. 323.

Several subdivisions of section 25 are referred to in *Currey v. Miller*, 113 Cal. 645, where it was held that the Fee Bill of 1895 was applicable to San Francisco.

Under the provisions of this section the legislature has no power to pass any local or special act directing money to be paid out of the funds of any particular municipality, *whether the payment be in satisfaction of an*

enforceable obligation or not, or whether the claim be liquidated or unliquidated, or be judicially determined valid or not. The cases of *Stevenson v. Colgan*, 91 Cal. 649, and *Rankin v. Colgan*, 92 Cal. 606, are distinguished because those cases dealt with the question of control of state funds as distinguished from municipal funds. *Conlin v. Board of Supervisors, San Francisco*, 114 Cal. 606. And see *Conlin v. Supervisors*, 99 Cal. 17.

The act of 1880 [Stats. p. 400], requiring mining corporations to post weekly reports of their superintendents, and imposing a fine of one thousand dollars for failure to comply therewith, is not unconstitutional as special legislation. *Miles v. Woodward*, 115 Cal. 310.

The provisions of section 173 of county government act of 1893 [Stats. pp. 415, 416], empowering certain county officers in counties of the eleventh class to appoint a specified number of deputies, whose salaries are fixed by the act, and made payable out of the county treasury, are not unconstitutional. *Tulare County v. May*, 118 Cal. 305.

PARAGRAPH 1. The act of March 7, 1881 [Stats. p. 75], creating an additional court, known as the police judges court No. 2, in San Francisco, is not in contravention of either sections 1, 2, 3, 4, 28 or 29 of section 25, article IV, constitution. *Ex parte Jordan*, 62 Cal. 464.

PARAGRAPH 2. The consolidation act of San Francisco conferred ample power upon the *supervisors* to pass an ordinance making it a

misdeameanor to visit gambling places, and is not unconstitutional. The constitution only prohibits the legislature from itself passing such local laws. [Distinguishing *Earle v. Board of Education*, 55 Cal. 489, declaring the *Traylor* act unconstitutional.] *Ex parte Chin Yan*, 60 Cal. 79.

Sections 300, 301, Penal Code, as existing in 1881, known as the "Sunday Law," are not unconstitutional as being "special legislation." *Ex parte Koser*, 60 Cal. 177. [McKinstry, Sharpstein and Ross, JJ., dissenting.]

The act of April 16, 1880 [Stats. p. 80] making it a misdeameanor for persons engaged in the baking of bread for sale to carry on said business between the hours of 6 P. M. on Saturday and 6 P. M. on Sunday, is a special law and unconstitutional. *Ex parte Westerfield*, 55 Cal. 550.

The act of 1878 [Stats. p. 953], providing for sentence of persons convicted of felonies or misdeameanors to the house of correction in San Francisco, is not special or local legislation, either as to the punishment or as to practice of courts. *Ex parte Lizzie Williams*, 87 Cal. 78.

Prior to adoption of the present constitution, section 340 of the Penal Code prohibited pawn brokers from demanding or receiving more than four per cent. per month as interest. By amendment of 1881 the rate was reduced to two per cent. per month. This restriction was held constitutional as a general law, applicable *uniformly* to a certain class of

business, under the former constitution, in several cases. [Jackson v. Shawl, and cases there cited, 29 Cal. 267.] *Held*, the code provision does not violate subdivisions 2 or 23 of section 25, article IV, of present constitution. *Ex parte* Lichenstein, 67 Cal. 359.

Referred to in *Ex parte* Jordan, 62 Cal. 464.

Section 310½ of the Penal Code as enacted in 1895 [Stats. p. 247, Palm Ed.], which prohibited barbers and hairdressers from keeping open their places of business after 12 o'clock M. on Sundays and holidays, was declared violative of this provision, the court saying that in this state Sunday laws have never been upheld from a religious standpoint, but they have been construed and viewed as civil and secular enactments, and when upheld as valid it has only been when they could be considered as a proper exercise of the police power—for the preservation of health and good morals; and said enactment was held to be unconstitutional as a "special" law. *Ex parte* Jentzsch, 112 Cal. 470.

PARAGRAPH 3. The act of the legislature [Stats. 1889, pp. 157, 168] making certificate of street assessment *prima facie* evidence is constitutional. McDonald v. Conniff, 99 Cal. 386.

The act of 1871-2 [Stats. p. 533], requiring plaintiff in an action for slander to file an undertaking with sureties, and which act was passed at the same session by which the codes were adopted, and subsequent to their adoption, is not repealed by the constitution, and

is not a local or special law. *Smith v. McDermot*, 93 Cal. 421; citing *Ex parte Burke*, 59 Cal. 6; *School Dist. v. Shoecraft*, 88 Cal. 372.

The act of March 12, 1885 [Stats. p. 114], to facilitate the giving of bonds required by law, and authorizing corporations to become sole sureties on bonds and undertakings, is a general law, and is not void as regulating the practice of courts of justice. *Cramer v. Tittle*, 72 Cal. 12.

The act of March 16, 1864 [Stats. p. 183], relating to foreclosing street assessments in Sacramento provided that such actions should be brought in the name of the people of the state of California. The act is constitutional. The legislature had power to regulate pleadings in that class of actions. *Sullivan v. Mier*, 67 Cal. 264. [The decision is not controlled by the present constitution.]

The provisions of section 3670 Political Code, prescribing form of complaint to recover delinquent railroad taxes cannot control the provisions of the Code of Civil Procedure expressly devoted to the subject of pleading, and the sections 3665 to and including 3670 (as then existing), constitute special legislation, discriminating in the matter of assessing and collecting railroad taxes, regulating practice of courts and exemption of property from taxation. *People v. C. P. R. Co.*, 83 Cal. 393.

The clause in section four of the act of March 16, 1889 [Stats. p. 212], supplementary

to the Wright irrigation law, providing that a motion for new trial in a proceeding for confirmation, must be made only on the minutes of the court, is in conflict with the constitutional provision forbidding special legislation "regulating the practice of courts of justice," and destructive of the uniform operation of a general law. *Cullen v. Glendora Water Co.*, 113 Cal. 504.

Referred to in *Ex parte Williams*, 87 Cal. 78 and *Ex parte Jordan*, 62 Cal. 464.

PARAGRAPH 4. Referred to in *Ex parte Jordan*, 62 Cal. 464.

PARAGRAPH 7. A grant of land to city for nominal consideration used as cemetery on condition that city procure legislative authority to remove the bodies, and land then to be devoted to purposes of ornamental square, etc., *Held*, the condition precedent of procuring legislative authority was not void under section 25 paragraph 7, since if general legislation could not be procured, it simply made the condition an impossible one. *City of Stockton v. Weber*, 98 Cal. 433.

The road laws applicable to the several counties remained in force after the adoption of the codes, and are not subject to the objection of being special legislation. They were in force before the adoption of the present constitution, and that instrument only applies to statutes passed after its adoption. *Meade v. Watson*, 67 Cal. 591.

This provision does not prohibit the enactment of a general law under which bodies may

be removed from cemeteries or graveyards. *Stockton v. Weber*, 98 Cal. 433. Under the present constitution special laws are prohibited in cases where a general law can be made applicable. *City of Pasadena v. Stimson*, 91 Cal. 249.

The provision of section 11 of article VI is limited by subdivision 7 of section 25, article IV, but the term of office is something different from the powers, duties and jurisdiction of the officer, and there is nothing in the constitution requiring that justices of the peace in cities should hold office for the same term as township justices. *Kahn v. Sutro*, 114 Cal. 318.

The amendment of 1891 to the street improvement law [Stats. p. 116], providing that bonds might be issued, in the discretion of the city council, in payment for street improvements where the cost exceeded two dollars per front foot, being applicable alike to all of the cities to be affected thereby, is not in conflict with those provisions of the constitution requiring laws of a general nature to have a uniform operation and forbidding special acts for certain purposes. [The act referred to was repealed in 1893, Stats. p. 38.] *Hellman v. Shoulters*, 114 Cal. 139.

PARAGRAPH 9. The act of legislature amending county government act [Stats. 1887, p. 207], authorizing supervisors in counties of certain classes to appoint deputies for county clerk and *pay such deputies out of county treasury was a delegation to super-*



visors of legislative functions and impaired the uniform operation of what should be a general law. *Dougherty v. Austin*, 94 Cal. 601, 626; *McFarland and Paterson, JJ.* dissenting.

The act of March 24, 1876 [Stats. 1875-6, p. 461], is not subject to the objection that it is an attempt by special legislation, to deprive the supervisors of all discretion with respect to a local improvement. *People v. Bartlett*, 67 Cal. 156. [There was no constitutional inhibition of special legislation when the act of 1876 was passed.]

The act of March 28, 1878 [Stats. p. 442], requiring an applicant for saloon license in San Francisco to first obtain consent of a majority of the police commissioners is unconstitutional. *Purdy v. Sinton*, 56 Cal. 133.

The amendment of 1889 [Stats. p. 232], to the county government act requiring license taxes collected in any incorporated city or town, under ordinances of supervisors, or under Political Code, part 3, title 7, chapter 15, being applicable to only counties of a certain class, is local and special legislation, and violates section 11, article I of constitution and paragraphs 9-33 of article IV. *County of San Luis Obispo v. Graves*, 84 Cal. 71.

PARAGRAPH 10. Referred to in *People v. C. P. R. R. Co.*, 83 Cal. 393.

The statute requiring assessors to collect taxes on personal property at the time of assessing, where the tax is not secured by lien

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upon real property violates no provision of the constitution. *Rode v. Siebe*, 119 Cal. 521.

Sections 162 and 216 of the county government act of 1895 [Stats. pp. 1-11], by which the county assessor of counties of the second class were required to pay into the county treasury the percentage received on poll taxes, personal property taxes and the amounts allowed for returning names of persons subject to military duty is not unconstitutional, but is a legitimate provision regulating the compensation of officers under a general classification of counties made for that purpose. *Summerland v. Bicknell*, 111 Cal. 568.

PARAGRAPH 11. The legislature may provide by special act for the organization and fixing boundaries of new counties, and by such act provide for submitting the question to the electors of the territory to be embraced in the proposed new county at election to be held for that purpose. *People v. McFadden*, 81 Cal. 489.

PARAGRAPH 13. Referred to in *People v. C. P. R. R. Co.*, 83 Cal. 393.

PARAGRAPH 19. The act of March 30, 1878, and amendment [Stats. 1887, p. 90], known as "Bank Commissioners Act," is not in contravention of article IV, section 25, subdivision 19, forbidding local or special laws granting to any corporation special or exclusive rights, privileges or immunities. *People v. Superior Court*, 100 Cal. 105.

The act of April 3, 1876 [Stats. p. 792], to regulate the *practice of medicine* and confer-

ring certain powers upon the commission to be selected by the medical societies, is not unconstitutional. *Ex parte Johnson*, 62 Cal. 263, decided upon authority of *Ex parte Frazer*, 54 Cal. 94.

The sections of the Political Code relating to state harbor commissioners including sections 2521-2522, as amended in 1876 and 1883, in delegating to the board power to appoint secretaries, attorney, engineer and wharfinger, fixing the term of office of such appointees and providing that they may be removed by the board at any time, after due investigation for cause, are not unconstitutional as special legislation nor as a delegation to the board of legislative functions. *Ford v. Harbor Commissioners*, 81 Cal. 19; *Beatty, C. J. and Works J.*, dissenting.

Section 2853 of the Political Code, providing that "No toll-bridge or ferry must be established within one mile immediately above or below any regularly established ferry or toll-bridge," is not in conflict with the constitutional provisions prohibiting the passage of special laws or the granting of special privileges or immunities. *Fortain v. Smith*, 114 Cal. 494.

PARAGRAPH 20. Referred to in *People v. C. P. R. R. Co.*, 83 Cal. 393, and *Fortain v. Smith*, 114 Cal. 494.

PARAGRAPH 27. The act of April 2, 1880 [Stats. p. 105], commonly known as the "Traylor Act," and purporting to add a new section—1618—to the Political Code, relating

to salaries of teachers in cities of one hundred thousand inhabitants or more, is local and unconstitutional. The fixing of salaries of teachers is a part of the management of public schools. And said act is not an amendment of the code. *Earle v. Board of Education*, 55 Cal. 489.

PARAGRAPH 28. An act of the legislature of March, 1889 [Stats. p. 148], amending former act incorporating the city of Sacramento, and authorizing the police commissioners to appoint policemen for said city not exceeding in number thirty, was a special act referring to that city alone and operative nowhere else. Fifteen policemen were provided for the city under its former incorporation acts passed prior to the new constitution. *Held*, that the authorization for thirty policemen was the creation of new offices to the extent of fifteen, and that the act is to this extent void. *Farrell v. Board of Trustees*, 85 Cal. 408.

The act of March 15, 1889 [Stats. p. 62], creating police court in city and county of San Francisco, is not unconstitutional, its interest and purpose being to add another judge to the courts already existing. *Ex parte Lloyd*, 78 Cal. 421.

Referred to in *Ford v. Harbor Commissioners*, 81 Cal. 19, and *Ex parte Jordan*, 62 Cal. 464.

PARAGRAPH 29. The provision of the county government act [Sec. 235, Stats. 1893, p. 512], authorizing supervisors to ascertain the number of people in the old county after a new

county has been created therefrom, for the purpose of ascertaining to what class said old county then belongs, is not a grant of legislative power to the supervisors, and the ascertainment of such fact is not legislation, hence does not contravene the provision prohibiting special legislation concerning fees of officers. *Kumler v. Supervisors*, 103 Cal. 395.

Where an act affecting salary or compensation of an officer is not void on its face, the court will not look into evidence *aliunde* to determine its invalidity. *Rankin v. Colgan*, 92 Cal. 606, citing *Stevenson v. Colgan*, 91 Cal. 649.

The act of March 14, 1891 [Stats. p. 106], readjusting and reducing salaries of officers in counties of thirty-fifth class is not a special or local law; it is applicable to all counties of a class as made or authorized by the constitution. *Cody v. Murphy*, 89 Cal. 522, distinguishing *Miller v. Kister*, 68 Cal. 142, and citing *People v. Henshaw*, 76 Cal. 444; *Longan v. County of Solano*, 65 Cal. 125; *Thomason v. Ashworth*, 73 Cal. 73.

There being no act in force providing for salary of Supreme Court reporter for the period from January 1 to July 1, 1888, it was competent for the legislature in 1883 to pass an act providing compensation for that officer during said period. *Smith v. Dunn*, 64 Cal. 164.

A municipal charter, approved by the legislature, could not provide for increase of the salary of the justice of the peace of the city of *Stockton* by adding to that office the duties

theretofore performed by the city police justice. First, because the legislature could not increase the salary of the city justice during his term, and second, such legislation could not be accomplished by a special or local law. *Milner v. Reibenstein*, 85 Cal. 393.

Numerous cases involving local legislation with reference to salaries, etc., are collected under section 11, article I, but for convenience the following are given with reference to paragraph 29, this section: *People v. Chapman*, 61 Cal. 263; *Miller v. Kister*, 68 *Id.* 142; *Longan v. County of Solano*, 65 *Id.* 125; *Thomason v. Ashworth*, 73 *Id.* 73; *People v. Henshaw*, 76 *Id.* 444; *Cody v. Murphy*, 89 *Id.* 522; *Home for Inebriates v. Reis*, 95 *Id.* 149.

The prohibition extends to the passing of any local or special law creating offices, or prescribing the duties or powers of officers in counties, or affecting the fees or salary of any officer. *People v. Ferguson*, 65 Cal. 288. It seems that section 1206, Code of Civil Procedure, relating to claims of laborers, etc., in cases of executions and attachments, does not conflict with any of the provisions of this section. *Mohle v. Tschirch*, 63 Cal. 381.

Referred to in *City of Pasadena v. Stimson*, 91 Cal. 249, and *County San Luis Obispo v. Graves*, 84 Cal. 71.

The act of the legislature of March 23, 1893 [Stats. p. 280], purporting to fix the salaries of policemen and captains of police in cities of a certain class, was held to violate various sections of the *constitution as to classification*

of cities and as to special legislation. *Darcy v. Mayor of San Jose*, 104 Cal. 644.

The provisions of sections 162 and 216 of the county government act of 1895 [Stats. pp. 1-11], requiring the assessors of counties of the second class to pay into the county treasury the percentages received on poll taxes, personal property taxes, and the sums allowed for returning names of persons subject to military duty, are not "special" legislation, but constitute a general law applicable alike to all counties of a given class, which class is constituted by a general law as authorized by the constitution, for the express purpose of regulating and fixing the compensation of officers. *Summerland v. Bicknell*, 111 Cal. 568.

The act of March 28, 1895 [Stats. p. 338, Palm Ed.], is unconstitutional in so far as relates to a board of election commissioners for cities, or cities and counties having a population of one hundred and fifty thousand or more. It is a subject upon which a general law can be made applicable and violates subdivision 33 of section 25, article IV. [Reference is also made to subdivisions 9, 11 and 28 of the same section. And see notes under section 6, article II, *infra*.] *Denman v. Broderick*, 111 Cal. 99.

Section 310½ of the Penal Code as enacted in 1895 [Stats. p. 247], prohibiting barbers and hair dressers from keeping their places of business open after 12 m. on Sundays and holidays, is held to violate several provisions of

the constitution, and it is clearly indicated that a general law on the subject of Sunday labor would have to embrace many trades and callings, and also that "Sunday laws," from a religious point of view, are contrary to our state policy, and are upheld only when they can be considered as a proper exercise of the police power. *Ex parte Jentzsch*, 112 Cal. 470.

The act of March 26, 1895 [Stats. p. 115], providing for the disincorporation of municipal corporations of the sixth class is not obnoxious to subdivision 33 of section 25 of this article; the classification of municipalities being proper, and the matter of disincorporation being organic in nature rather than functional. *Mintzer v. Schilling*, 117 Cal. 363.

It was held that this section was violated by section 195 of the county government act of 1891 [Stats. 1891, p. 397], which provided that in counties of a certain class the clerk should, in addition to other fees, collect one dollar for each one thousand dollars of the value of estates (in excess of \$5000) in probate proceedings. *Bloss v. Lewis*, 109 Cal. 497.

For similar case respecting witness fees in counties of twenty-eighth class see *Turner v. County of Siskiyou*, 109 Cal. 334. But collateral inheritance tax is upheld in *Fatjo v. Pfister*, 117 Cal. 83.

The object of classifying municipal corporations according to population, and forbidding their creation by special laws, was to avoid the *necessity of special legislation*; and



the legislature cannot pass laws touching the organization and incorporation of municipalities except by conforming to the incorporation act. An act prescribing the manner of paying official fees in San Francisco radically differing from the general law elsewhere applicable is special legislation. *Rauer v. Williams*, 118 Cal. 402.

SECTION 26. The legislature shall have no power to authorize lotteries or gift enterprizes for any purpose, and shall pass laws to prohibit the sale in this state of lottery or gift enterprise tickets, or tickets in any scheme in the nature of a lottery. The legislature shall pass laws to regulate or prohibit the buying and selling of the shares of the capital stock of corporations in any stock board, stock exchange or stock market under the control of any association. All contracts for the sale of shares of the capital stock of any corporation or association, on margin or to be delivered at a future day, shall be void, and any money paid on such contracts may be recovered by the party paying it by suit in any court of competent jurisdiction.

Const. 1849, Art. IV, Sec. 27. [Lottery.]

In action to recover money alleged to have been given brokers to be used in buying and selling wheat, the lower court found all allegations of complaint untrue and all allegations of answer true. *Held*, it appearing that appellant was not an innocent party to the transaction, and being in *pari delicto*, the law leaves her where it finds her. *Wymans v. Moore*, opinion filed June 26, 1894.

An agreement between stock broker and his customer by which the broker agrees to buy

stocks for the customer, the broker advancing money and charging commissions and interest on money advanced and holding stocks purchased as security, the customer receiving or being charged with the difference between the buying and selling price of the stocks, is a contract for sale of stocks on margin, and land conveyed by the customer to secure the broker for advances made by the broker may be recovered in an action therefor. *Cashman v. Root*, 89 Cal. 374. Approved in *Wetmore v. Barrett, et al.*, 103 Cal. 246; *Sheehy v. Shinn*, 103 Cal. 325; *Kullman v. Simmens*, 104 Cal. 600.

In the concurring opinion of McFarland, J. in *Sheehy v. Shinn*, it is said, "The judiciary cannot avoid the consequences of a provision of constitutional law which allows a party to a contract to profit by it as long as it pays, and to repudiate it by boldly ignoring his solemn obligations as soon as it begins to show loss."

A contract between brokers, whereby one agrees to purchase and sell stock on account of the other, advancing money and paying assessments, is not prohibited by this section; it was not a case of sale. *Kutz v. Fleisher*, 67 Cal. 93.

The construction of this section does not depend upon the evidence of witnesses in particular cases as to what the terms "on margin, or to be delivered at a future day," mean, according to the usage of brokers and dealers in stocks during years immediately

preceding adoption of this constitution. This section is self-executing, and the contracts designated are declared void. To give effect to the constitution it is as much the duty of courts to see that it is not evaded, as that it is not directly violated. *Sheehy v. Shinn*, 103 Cal. 328.

Under this section the legislature is prohibited from authorizing lotteries for any purpose, and the section is mandatory upon it to pass laws prohibiting the sale of tickets for anything in the nature of a lottery. Sections 319 to 326, Penal Code, and the ordinance of San Francisco making it a misdemeanor for any one to have a lottery ticket in his possession are in consonance with this mandate. All such laws should have a liberal construction with a view to carry out the constitutional policy. *Collins v. Lean*, 68 Cal. 284.

SECTION 27. When a congressional district shall be composed of two or more counties, it shall not be separated by any county belonging to another district. No county, or city and county, shall be divided in forming a congressional district so as to attach one portion of a county, or city and county, to another county, or city and county, except in cases where one county, or city and county, has more population than the ratio required for one or more congressmen; but the legislature may divide any county, or city and county, into as many congressional districts as it may be entitled to by law. Any county, or city and county, containing a population greater than the number required for one congressional district, shall be formed into one or more congressional districts, according to the population thereof, and any residue, after forming

such district or districts, shall be attached by compact adjoining assembly districts, to a contiguous county or counties, and form a congressional district. In dividing a county, or city and county, into congressional districts no assembly district shall be divided so as to form a part of more than one congressional district, and every such congressional district shall be composed of compact contiguous assembly districts.

Const. 1849, Art. IV, Sec. 30.

SECTION 28. In all elections by the legislature the members thereof shall vote viva voce, and the votes shall be entered on the journal.

Const. 1849, Art. IV. Sec. 38.

This section is referred to in *Oakland Pav. Co. v. Hilton*, 69 Cal. 512, where it is said to be mandatory that an actual entry in the minutes should be made of such matters as are directed to be entered in sections 10, 15, 16, 28 of this article. In *People v. Dunn*, 80 Cal. 211, it is said, the question as to the power of the court to go behind the enrolled bill in order to determine from the journals of the two houses whether the bill was properly passed or not is not presented, but it is decided that the position that every act not shown by the journals to have taken place must be presumed not to have been done, is not tenable. See cases given under section 15, this article.

SECTION 29. The general appropriation bill shall contain no item or items of appropriation other than such as are required to pay the salaries of the state officers, the expenses of the government, and of the institutions under the exclusive control *and management* of the state.

The act of March 13, 1883 [Stats. p. 292], making appropriation for salary of Supreme Court reporter is valid. *Smith v. Dunn*, 64 Cal. 164.

That no money can be drawn from the treasury except in consequence of appropriation made by law, and warrant of controller, and that when drawn without authority of law, it may be recovered back. *People v. Chapman*, 61 Cal. 263. [Sec. 22, Art. IV.]

The act of March 14, 1889 [Stats. p. 149], appropriating one hundred thousand dollars to maintain a mining bureau is constitutional. *Proll v. Dunn*, 80 Cal. 220. [Sec. 22, Art. IV.]

The remedy given is a recovery of money paid on a void contract. There is no distinction to be made between money paid under a contract declared void by the constitution and that paid under any other void contract. *Rued v. Cooper*, 109 Cal. 692.

The mere production of a receipt in full upon a settlement of account, consisting of dealings under contract for purchase and sale of stock upon margin, without proof of agreement to settle the right to recover the moneys illegally paid, does not sustain a defense of accord and satisfaction. *Rued v. Cooper*, 119 Cal. 465.

It is conceded that an office cannot be created by the general appropriation bill, but provision may be contained therein for payment of salary of an expert to be employed by the state board of examiners. Such appro-

priation does not create an office. The expert was an employee and not an officer, and his employment was within the scope of the general powers of the board. The question would be the same if the board had employed the expert before the appropriation and the appropriation had been afterward made, but the amount of his compensation would depend upon the legislative will. *Lewis v. Colgan*, 115 Cal. 531.

The legislature is forbidden to pass any local or special law affecting the fees or salary of any officer. *Dwyer v. Parker*, 115 Cal. 546.

SECTION 30. Neither the legislature, nor any county, city and county, township, school district, or other municipal corporation, shall ever make an appropriation, or pay from any public fund whatever, or grant anything to or in aid of any religious sect, church, creed, or sectarian purpose, or help to support or sustain any school, college, university, hospital or other institution controlled by any religious creed, church, or sectarian denomination whatever; nor shall any grant or donation of personal property or real estate ever be made by the state, or any city, city and county, town, or other municipal corporation for any religious creed, church, or sectarian purpose whatever; provided, that nothing in this section shall prevent the legislature granting aid pursuant to section twenty-two of this article.

SECTION 31. The legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the state, or of any county, city and county, city, township, or other political corporation or subdivision of the state now existing, or that may be hereafter established, in aid of or to any person, association, or corporation, whether municipal or otherwise, or to pledge the credit

thereof, in any manner whatever, for the payment of the liabilities of any individual, association, municipal or other corporation whatever; nor shall it have power to make any gift, or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever, provided that nothing in this section shall prevent the legislature granting aid pursuant to section twenty-two of this article; and it shall not have power to authorize the state, or any political subdivision thereof, to subscribe for stock, or to become a stockholder in any corporation whatever.

Courts take judicial notice of fact that under statutory requirements, all contracts for street improvements in San Francisco contain express conditions that in no case will that municipality be liable for any portion of expense of said work, or any delinquency of persons or property assessed. *Held*, the act of 1891 [Stats. p. 513], directing supervisors to pay one C, an amount unpaid on contracts for improvement of public streets for which he has not been able to obtain compensation according to the mode of procedure in such cases made and provided by statute, shows on its face a gift of public money and is void. *Conlin v. Board of Supervisors*, 99 Cal. 17.

A legislative appropriation for the benefit of sufferers by the Tia Juana flood, is upon its face a gift and void. *Patty v. Colgan*, 97 Cal. 251.

Where an act of the legislature does not *show upon its face* that it appropriates money *as a gift*, evidence *aliunde* will not be received

on petition for mandate for the purpose of determining that it is intended as a gift. *Stevenson v. Colgan*, 91 Cal. 649. And when such act purports only to provide compensation for an officer, evidence *aliunde* will not be received to show that the appropriation is for a prohibited purpose. *Rankin v. Colgan*, 92 Cal. 606. In passing upon the constitutionality of a statute, only the facts appearing upon the face thereof, together with such matter as is taken judicial notice of, will be considered; and averments of facts, *aliunde* in the pleadings will not be considered. After the occurrence of an injury to a servant of the state, the state cannot assume liability therefor. It might assume such liability by a general law enacted prior to such injury. A statute appropriating money to an individual in payment of a claim for damages resulting from personal injuries received by him while in the employ of the state, imports a gift and such appropriation is void. *Bourn v. Hart*, 93 Cal. 321.

To constitute a gift by the legislature, within the inhibition of the constitution, there must be a gratuitous transfer of the property of the state; made voluntarily and without consideration. The act of the legislature [State. 1889, p.142], providing for the purchase of the lease of the Yosemite and Wawona road and making an appropriation therefor is not a gift. *Yosemite S. & T. Co. v. Dunn*, 83 Cal. 264.

*The legislature has no authority to vote*



extra compensation to watchmen, porters, pages, etc., for services already rendered. *Robinson v. Dunn*, 77 Cal. 473.

The legislature has no power to create a liability against the state for any past acts of negligence on the part of its officers. In the absence of a statute by which the state voluntarily assumes such liability, the state is not liable in damages for negligence of an officer in discharge of official duty. (Case where state is held liable by reason of contractual obligations.) *Chapman v. State*, 104 Cal. 693.

"Gift" and "bounty" and "reward" defined in *Ingram v. Colgan*, 106 Cal. 124, and "appropriation" is defined in same case, pages 116, 117, where it is also held that the act of 1891 providing for a bounty to be paid for coyote scalps did not make an appropriation but was only a promise by the state to pay the bounty, and merely pledged the good faith of the government to make an appropriation for the purpose.

The act of February 28, 1893 [Stats. p. 57], providing for payment of interest coupons and interest thereon of certain Indian war bonds is retroactive and void.

Section 1917 of the Civil Code does not apply to the state, and the state is not liable to pay interest on its debts, unless its consent to do so has been manifested by an act of the legislature, or some lawful contract executed by its officers. The purpose of the act in question is a "gift" in so far as it relates to

interest on the coupons after their maturity. *Molineux v. State of California*, 109 Cal. 380.

The credit of a county cannot be pledged for the payment of the liabilities of a municipal or other corporation. The county cannot be made to refund taxes illegally collected for a school district; the county is not given any recourse against the school district. *Pac. Mut. Life Ins. Co. v. County of San Diego*, 112 Cal. 314. See also *Elberg v. County of San Luis Obispo*, 112 Cal. 316.

It is assumed that a contract by a municipal corporation to pay money to any person or corporation to secure the construction of a railroad would be void. *Higgins v. San Diego Water Co.*, 118 Cal. 546.

SECTION 32. The legislature shall have no power to grant or authorize any county or municipal authority to grant any extra compensation or allowance to any public officer, agent, servant or contractor, after service has been rendered, or a contract has been entered into and performed, in whole or in part, nor to pay, or to authorize the payment of, any claim hereafter created against the state, or any county or municipality of the state, under any agreement or contract made without express authority of law; and all such unauthorized agreements or contracts shall be null and void.

An act appropriating ten thousand dollars to A. J. Bourn, a state prison guard who lost an arm while in discharge of his duties, and acting under orders of his superior officers, is unconstitutional. *Bourn v. Hart*, 93 Cal. 321, approving *Stevenson v. Colgan*, 91 *Id.* 649, to the effect *that the constitutionality of a stat-*

ute must be determined by the court from what appears on its face, when considered with reference to matters judicially noticed by the court. In *Rankin v. Colgan*, 92 *Id.* 606, it is held that where an act providing compensation for an officer does not appear invalid on its face, evidence outside the record will not be received on petition for mandamus to show that the appropriation is one prohibited by the constitution.

The act of March 4, 1889 [Stats. p. 56], providing a police relief and pension fund, does not grant extra compensation. *Pennie v. Reis*, 80 Cal. 266.

A resolution of the senate making an extra allowance to pages, porters, watchmen, etc., for services already performed, is void, either as a gift or as extra compensation. *Robinson v. Dunn*, 77 Cal. 473.

The act of April 23, 1880 [Stats. p. 389], to promote drainage, was declared unconstitutional in *People v. Parks*, 58 Cal. 624. Claims against the state having been justly incurred under said act, prior to its being held unconstitutional, the legislature had power to pass the act of March 10, 1885 [Stats. p. 78], appropriating money to pay said claims. *Miller v. Dunn*, 72 Cal. 462.

A contract between the supervisors and a district attorney, by which the latter is engaged, for a compensation, to attend to a suit against the county, which is to be tried after *his term* of office expires, and in another county, is not an allowance of extra compen-

sation. *Jones v. Morgan*, 67 Cal. 308, and see *Smith v. Dunn*, 64 Cal. 164. [Par. 29, Sec. 25, Art. IV.]

*Rankin v. Colgan* is approved in *Lewis v. Colgan*, 115 Cal. 534. The power of the harbor commissioners to employ an architect, by reason of their general authority to erect a building, is sustained in *Bateman v. Colgan*, 111 Cal. 588, and the power of a county board of supervisors to employ an expert is sustained in *Harris v. Gibbins*, 114 Cal. 418. The power in these several cases is rested upon the rule that in addition to powers expressly given by statute, every board or officer possesses, by implication, such additional powers as may be necessary for the due and efficient exercise of the powers expressly given or as may be fairly implied from the statute granting the powers. Such cases are to be distinguished from those of *Modoc County v. Spencer*, 103 Cal. 498, and *El Dorado County v. Meiss*, 100 Cal. 268, in the latter of which cases there was an infraction of the express inhibition contained in section 5 of article XI of the constitution.

In *Miller v. Dunn*, 72 Cal. 462, it is decided that an act of the legislature passed in due form, but unconstitutional in its substance, could nevertheless be treated as a "law" in the sense that it would support an appropriation to pay for the work done under color of its authority and before its invalidity had been declared by the courts. In *Brooks v. Fischer*, 79 Cal. 173, it is held that a municipal char-

ter, framed by a board of freeholders under section 8, article XI, constitution, may be approved by a concurrent resolution of both houses of the legislature, because only the "assent" of the legislature is required, it being expressly held that the legislature is one thing and the law making power of the state is another; but those cases are not authority, for the proposition that the legislature can enact "laws" in any other mode than by bill. A concurrent resolution approving the appointment of John Mullan by the governor and surveyor general, as agent and attorney to represent this state in Washington in the matter of the claims of this state against the United States, is not a law, and a contract entered into with Mullan in pursuance of such resolution is made "without express authority of law," and the state is not estopped from denying its validity. *Mullan v. State*, 114 Cal. 578.

SECTION 33. The legislature shall pass laws for the regulation and limitation of the charges for services performed and commodities furnished by telegraph and gas corporations, and the charges by corporations or individuals for storage and wharfage, in which there is a public use; and where laws shall provide for the selection of any person or officer to regulate and limit such rates, no such person or officer shall be selected by any corporation or individual interested in the business to be regulated, and no person shall be selected who is an officer or stockholder in any such corporation.

*Primary elections is a subject upon which a general law having a uniform operation*

may be passed, and such a law being made applicable to only two classes of counties is special and unconstitutional. [Primary Election Law of 1895, Stats. p. 207.] *Marsh v. Supervisors Los Angeles County*, 111 Cal. 370. See also *Gett v. Supervisors Sacramento*, 111 Cal. 367.

SECTION 34. No bill making an appropriation of money, except the general appropriation bill, shall contain more than one item of appropriation, and that for one single and certain purpose to be therein expressed.

An act [Stats. 1891, p. 283] to encourage the cultivation of ramie, to provide a bounty for ramie fibre, to make an appropriation therefor, to appoint a state superintendent and make appropriation for his salary, contains two distinct items of appropriation, for expressly different special purposes, and is invalid. *Murray v. Colgan*, 94 Cal. 435.

The act of 1889 [Stats. p. 69], appropriating money for building site and erection thereon of home for feeble minded children, contains but one item for one purpose. *People v. Dunn*, 80 Cal. 211.

SECTION 35. Any person who seeks to influence the vote of a member of the legislature by bribery, promise of reward, intimidation, or any other dishonest means, shall be guilty of lobbying, which is hereby declared a felony; and it shall be the duty of the legislature to provide by law, for the punishment of this crime. Any member of the legislature, who shall be influenced in his vote or action upon any matter pending before the legislature by any reward, or promise of future reward shall be

deemed guilty of a felony, and upon conviction thereof, in addition to such punishment as may be provided by law, shall be disfranchised, and forever disqualified from holding any office or public trust. Any person may be compelled to testify in any lawful investigation or judicial proceeding against any person who may be charged with having committed the offense of bribery or corrupt solicitation, or with having been influenced in his vote or action, as a member of the legislature, by reward, or promise of future reward, and shall not be permitted to withhold his testimony upon the ground that it may criminate himself or subject him to public infamy; but such testimony shall not afterwards be used against him in any judicial proceeding, except for perjury in giving such testimony.

Services rendered by an attorney at law in endeavoring to persuade members of the legislature to vote or to act favorably upon a bill introduced in the interest of a client, when no secret, unfair, or dishonest means are employed, is not lobbying in the sense prohibited by the constitution. *Foltz v. Cogswell*, 86 Cal. 542.

## ARTICLE V.

### EXECUTIVE DEPARTMENT.

SECTION 1. The supreme executive power of this state shall be vested in a chief magistrate, who shall be styled the governor of the state of California.

Const. 1849, Art. V, Sec. 1.

*See Staude v. Election Commissioners*, 61 Cal. 322, cited under Art. III.

SECTION 2. The governor shall be elected by the qualified electors at the time and places of voting for members of the assembly, and shall hold his office four years from and after the first Monday after the first day of January subsequent to his election, and until his successor is elected and qualified.

Const. 1849, Art. V, Sec. 2.

Referred to in *Merced Bank v. Rosenthal*, 99 Cal., and *People ex rel Lynch v. Budd*, 114 Cal. 168.

Sections 2, 15, 16 of this article correspond with sections 2, 16, 17 of article V, of former constitution, except in certain particulars. As to vacancy in office of governor, see *People v. Whitman*, 10 Cal. 45. Approved in *Treadwell v. Yolo Co.*, 62 Cal. 569. Referred to also in *Barton v. Kalloch*, 56 Cal. 101.

SECTION 3. No person shall be eligible to the office of governor who has not been a citizen of the United States and a resident of this state five years next preceding his election, and attained the age of twenty-five years at the time of such election.

Const. 1849, Art. V, Sec. 3.

SECTION 4. The returns of every election for governor shall be sealed up and transmitted to the seat of government, directed to the speaker of the assembly, who shall, during the first week of the session, open and publish them in the presence of both houses of the legislature. The person having the highest number of votes shall be governor: but in case any two or more have an equal and the highest number of votes, the legislature shall, by joint vote of both houses, choose one of such persons so having an equal and the highest number of votes, for governor.

Const. 1849, Art V, Sec. 4.



SECTION 5. The governor shall be commander in chief of the militia, the army and navy of this state.

Const. 1849, Art. V, Sec. 5.

SECTION 6. He shall transact all executive business with the officers of government, civil and military, and may require information in writing from the officers of the executive department, upon any subject relating to the duties of their respective offices.

Const. 1849, Art. V, Sec. 6.

SECTION 7. He shall see that the laws are faithfully executed.

Const. 1849, Art. V, Sec. 7.

SECTION 8. When any office shall, from any cause, become vacant, and no mode is provided by the constitution and law for filling such vacancy, the governor shall have power to fill such vacancy by granting a commission, which shall expire at the end of the next session of the legislature, or at the next election by the people.

Const. 1849, Art. V, Sec. 8.

The section is referred to in connection with *People v. Hammond*, 66 Cal. 655, in *People v. Menzies*, 110 Cal. 450.

Where an officer continues in the discharge of duties after term for which he was appointed has expired, and before the qualification of a successor, there is no vacancy in any sense which would authorize appointment by governor; without consent of the senate the office must have become vacant by death or resignation, or by some other event by which *the duties* of the office are no longer discharged *before the governor's function of appointment*

is called into existence. *People v. Edwards*, 93 Cal. 153; see also *People v. Hammond*, 66 Cal. 654.

A vacancy by death having occurred in office of state board of health, the governor appointed one Tyrrell to the office for the term of four years, and the latter duly qualified November 19, 1884. In January, 1885, the legislature being in session, the senate confirmed this appointment, but the governor did not thereafter issue any commission to Tyrrell, who continued to perform the duties of the office, nor did he, subsequent to confirmation by the senate, take any oath of office. On March 18, 1889, also during recess of the legislature, the governor appointed one Laine to said office, and the latter duly qualified. *Held*, the appointment of Tyrrell in 1884 was in legal effect, only to fill the vacancy then existing, the governor having no power to appoint for a longer time than the recess of the legislature [section 1000, Political Code], and such appointment did not require confirmation by senate. Under this appointment Tyrrell could hold the office until his successor was duly qualified. [Sec. 879, Political Code.] The mere expiration of the term of office does not create a vacancy. Whether the announcement by the governor to the senate of his appointment of Tyrrell, and the action of the senate thereon, constituted an appointment of Tyrrell as his own successor, not decided. The appointment of Laine in 1889 was invalid because *Tyrrell was discharging duties of the*

office under his appointment which was valid at least until the end of the next session of the legislature, and while there was an incumbent there was no vacancy to be filled by the governor. [People v. Tilton, 37 Cal. 614; People v. Bissell, 49 Cal. 407.] People v. Tyrrell, 87 Cal. 475.

It is said in Rosborough v. Boardman, 67 Cal. 117, that the enumeration of causes by which vacancies occur, contained in section 996 Political Code, is exclusive, and an office does not become vacant except upon the happening of one of the events there enumerated. Citing among other cases, People v. Bissell, 49 Id. 411; but that authority contains the words "or some other event," and Thornton J., concurring in the Rosborough decision [p. 119,] says "there may be other cases where an office becomes vacant in the sense of the words 'becomes vacant' employed in article V, section 8 of the constitution, not mentioned above or defined in section 996."

There may be an *hiatus* in office. See People v. Mott, 3 Cal. 502; People v. Tilton, 37 Cal. 620; People v. Ward, 107 Cal. 239.

It was the intent of the present as well as of the former constitution to limit the patronage of the governor. Treadwell v. Yolo Co., 62 Cal. 568, approving People v. Mizner, 7 Cal. 519.

"Next election by the people" does not mean the next election held, nor the next *general election*, but as applied to an appointee *the term* means that he should hold until

some one is regularly elected to that office, and as applied to the lieutenant-governor it means the next gubernatorial election. People *ex rel* Lynch *v.* Budd, 114 Cal. 168.

SECTION 9. He may, on extraordinary occasions, convene the legislature by proclamation, stating the purposes for which he has convened it, and when so convened it shall have no power to legislate on any subjects other than those specified in the proclamation, but may provide for the expenses of the session and other matters incidental thereto.

Const. 1849, Art. V, Sec. 9.

The senate in extra session may confirm an appointment made by the governor; such confirmation is not legislation. People *v.* Blanding, 63 Cal. 333.

SECTION 10. He shall communicate by message to the legislature, at every session, the condition of the state, and recommend such matters as he shall deem expedient.

Const. 1849, Art. V, Sec. 10.

SECTION 11. In case of a disagreement between the two houses with respect to the time of adjournment, the governor shall have power to adjourn the legislature to such time as he may think proper; provided it be not beyond the time fixed for the meeting of the next legislature.

Const. 1849, Art. V, Sec. 11.

SECTION 12. No person shall, while holding any office under the United States or this state, exercise the office of governor except as hereinafter expressly provided.

Const. 1849, Art. V, Sec. 12.

SECTION 13. There shall be a seal of this state, which shall be kept by the governor, and used by him officially, and shall be called "The Great Seal of the State of California."

Const. 1849, Art. V, Sec. 14.

SECTION 14. All grants and commissions shall be in the name and by the authority of the people of the state of California, sealed with the great seal of the state, signed by the governor, and countersigned by the secretary of state.

Const. 1849, Art. V, Sec. 15.

SECTION 15. A lieutenant-governor shall be elected at the same time and places, and in the same manner, as the governor; and his term of office and his qualifications of eligibility shall also be the same. He shall be president of the senate, but shall have only a casting vote therein. If, during a vacancy of the office of governor, the lieutenant-governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of his office, or be absent from the state, the president *pro tempore* of the senate shall act as governor until the vacancy be filled or the disability shall cease. The lieutenant-governor shall be disqualified from holding any other office, except as specially provided in this constitution, during the term for which he shall have been elected.

Const. 1849, Art. V, Sec. 16.

[*An amendment to this section was voted on at the general election November 8, 1898.*]

See cases cited under section 2 of this article. This section is referred to in *People ex rel Lynch v. Budd*, 114 Cal. 168.

SECTION 16. In case of the impeachment of the governor, or his removal from office, death, inability to discharge the powers and duties of the said

office, resignation, or absence from the state, the powers and duties of the office shall devolve upon the lieutenant-governor for the residue of the term, or until the disability shall cease. But when the governor shall, with the consent of the legislature, be out of the state in time of war, at the head of any military force thereof, he shall continue commander-in-chief of all the military force of the state.

Const. 1849, Art. V, Sec. 17.

*[An amendment to this section was voted on at the general election November 8, 1898.]*

See cases cited under sections one and two of this article.

SECTION 17. A secretary of state, a controller, a treasurer, an attorney-general and a surveyor-general shall be elected at the same time and places, and in the same manner as the governor and lieutenant-governor, and their terms of office shall be the same as that of the governor.

Const. 1849, Art. V, Sec. 18.

Referred to in *Barton v. Kalloch*, 56 Cal. 101.

SECTION 18. The secretary of state shall keep a correct record of the official acts of the legislative and executive departments of the government, and shall, when required, lay the same, and all matters relative thereto, before either branch of the legislature, and shall perform such other duties as may be assigned him by law.

Const. 1849, Art. V, Sec. 19.

SECTION 19. The governor, lieutenant-governor, secretary of state, controller, treasurer, attorney-general and surveyor-general shall, at stated times during *their continuance* in office, receive for *their services a compensation* which shall not be

increased or diminished during the term for which they shall have been elected, which compensation is hereby fixed for the following officers for the two terms next ensuing the adoption of this constitution, as follows: Governor, six thousand dollars per annum; lieutenant-governor, the same per diem as may be provided by law for the speaker of the assembly, to be allowed only during the session of the legislature; the secretary of state, controller, treasurer, attorney-general and surveyor-general, three thousand dollars each per annum, such compensation to be in full for all services by them respectively rendered in any official capacity or employment whatsoever during their respective terms of office; provided, however, that the legislature, after the expiration of the terms hereinbefore mentioned, may, by law, diminish the compensation of any or all of such officers, but in no case shall have the power to increase the same above the sums hereby fixed by this constitution. No salary shall be authorized by law for clerical service, in any office provided for in this article, exceeding sixteen hundred dollars per annum for each clerk employed. The legislature may, in its discretion, abolish the office of surveyor-general; and none of the officers hereinbefore named shall receive for their own use any fees, or perquisites for the performance of any official duty.

Const. 1849, Art. V, Sec. 21.

Referred to in Kirkwood v. Soto, 87 Cal. 396.

SECTION 20. The governor shall not, during his term of office, be elected a senator to the senate of the United States.

## ARTICLE VI.

## JUDICIAL DEPARTMENT.

SECTION 1. The judicial power of the states shall be vested in the senate sitting as a court of impeachment, in a Supreme Court, Superior Courts, justices of the peace, and such inferior courts as the legislature may establish in any incorporated city or town, or city and county.

Const. 1849, Art. VI, Sec. 1.

Police courts cannot be lawfully established by a city charter which is only approved by a majority of the members elected to both houses under section 8, article XI. Such courts can only be established by bill, as provided in sections 15, 16, article IV. *People v. Toal*, 85 Cal. 333. Beatty, C. J., dissenting.

The act of March 5, 1889 [Stats. p. 62], creating the police court in the city and county of San Francisco, is not unconstitutional as assuming to make the former judges the judges of a new court, but added to existing courts another judge. *Ex parte Lloyd*, 78 Cal. 421. [See also note Sec. 25, Art. IV, Par. 28.]

It is not unconstitutional to apply the word "court" to a tribunal presided over by a police judge. It is an inferior court, which the legislature may establish in any incorporated city or town, or city and county. So held with reference to commitment of criminal minors to non-sectarian charitable institutions in pursuance of section 1388, Penal Code. *Boys' and Girls' Aid Society v. Reis*, 71 Cal. 627.

*A police judge is a judicial officer, but he is*



also a municipal officer. *Ex parte Henry*, 62 Cal. 557.

Justices of the peace constitute a most important part of the judicial department. They are among the officers to be elected in 1879, and on even numbered years thereafter. [Sec. 10, Art. XXII; Sec. 20, Art. XX.] Their numbers, powers, and duties and liabilities are to be fixed by the legislature. [Secs. 1, 11, Art. VI.] The amendments to Political Code, section 1041 [Amendments 1880, p. 77], and sections 83, 103, 110, Code of Civil Procedure [Amendments 1880, p. 21], relating to election, etc., of said officers are valid and constitutional. *Coggins v. City of Sacramento*, 59 Cal. 599; *People v. Ransom*, 58 *Id.* 559; *Bishop v. Council of Oakland*, *Id.* 572; *Jenks v. Same*, *Id.* 576; *McGrew v. Mayor, etc.*, 55 *Id.* 611.

The act of March 12, 1885 [Stats. p. 101, and Stats. 1889, p. 13], creating a commission, and the acts amendatory thereof and supplementary thereto, are not unconstitutional, as they do not confer upon the commission the power to decide or render judgment. *People v. Hayne*, 83 Cal. 111.

Referred to in relation to the three departments of government in *Staudé v. Election Commissioners*, 61 Cal. 323, and for the purpose of distinguishing the case of *People v. Toal*, in *Security Sav. Bank v. Hinton*, 97 Cal. 216, and in dissenting opinion of Fox, J., in *People v. Ah You*, 82 *Id.* 343, to the effect *that the legislature, as by this section author-*

ized, has provided by general law for justices' courts in cities, and that the "Whitney act" is unconstitutional as special legislation, disagreeing with decision in *People v. Henshaw*, 73 *Id.* 507; and in *Green v. Superior Court*, 78 *Id.* 557, as to jurisdiction of misdemeanors.

The office of justice of the peace is a creation of the constitution, and cannot be created by a city charter; such offices are filled at a general state election, even in cities, and not at a city election. The justices of the peace are township and not city officers, and vacancies in the office are to be filled by appointment by boards of supervisors. *People v. Sands*, 102 Cal. 14.

It is held that in an action on an alleged contract to find and locate persons on *vacant government land*, the title to land is involved, and that a justices' court has no jurisdiction to try the case. [*Copertini v. Oppermann*, 76 Cal. 181; *Holman v. Taylor*, 31 Cal. 341.] *Hart v. Carnall-Hopkins Co.*, 103 Cal. 142.

Part of the judicial power of the state is vested in justices of the peace, and by sections 3 and 11 of article XXII, those courts were continued in existence, subject to subsequent legislation. *Kahn v. Sutro*, 114 Cal. 318.

There is nothing in the constitution requiring that the terms of office of justices of the peace should be the same in cities as in townships. *Kahn v. Sutro*, 114 Cal. 318.

SECTION 2. The Supreme Court shall consist of a chief justice and six associate justices. The court may sit in departments and in bank, and shall

always be open for the transaction of business. There shall be two departments, denominated, respectively, department one and department two. The chief justice shall assign three of the associate justices to each department, and such assignment may be changed by him from time to time. The associate justices shall be competent to sit in either department, and may interchange with each other by agreement among themselves or as ordered by the chief justice. Each of the departments shall have the power to hear and determine causes and all questions arising therein, subject to the provisions hereinafter contained in relation to the court in bank. The presence of three justices shall be necessary to transact any business in either of the departments, except such as may be done at chambers, and the concurrence of three justices shall be necessary to pronounce a judgment. The chief justice shall apportion the business to the departments, and may, in his discretion, order any cause pending before the court to be heard and decided by the court in bank. The order may be made before or after judgment pronounced by a department; but where a cause has been allotted to one of the departments, and a judgment pronounced thereon, the order must be made within thirty days after such judgment, and concurred in by two associate justices, and if so made it shall have the effect to vacate and set aside the judgment. Any four justices may, either before or after judgment by a department, order a case to be heard in bank. If the order be not made within the time above limited the judgment shall be final. No judgment by a department shall become final until the expiration of the period of thirty days aforesaid, unless approved by the chief justice, in writing, with the concurrence of two associate justices. The chief justice may convene the court in bank at any time, and shall be the presiding justice of the court when so convened. The concurrence of four justices present at the argument shall be necessary to pronounce a judgment in

bank; but if four justices, so present, do not concur in a judgment, then all the justices qualified to sit in the cause shall hear the argument; but to render a judgment a concurrence of four judges shall be necessary. In the determination of causes, all decisions of the court in bank or in departments shall be given in writing, and the grounds of the decision shall be stated. The chief justice may sit in either department, and shall preside when so sitting, but the justices assigned to each department shall select one of their number as presiding justice. In case of the absence of the chief justice from the place at which the court is held, or his inability to act, the associate justices shall select one of their own number to perform the duties and exercise the powers of the chief justice during such absence or inability to act.

Const. 1849, Art. VI, Sec. 2.

Under the constitution of this state there is but one Supreme Court, and its jurisdiction may be exercised either in bank or department; and in either case its exercise is of equal import. Its action in bank over the action of a department is supervisory, rather than appellate. As the constitution requires it to be always open for the transaction of business, any order that is made by a majority of the justices is an order of the court in bank, and the exercise, by the justices, of this supervisory control of the action of a department is the action of the court in bank. Nor is it necessary for this supervisory jurisdiction that a distinct order be made that a cause be heard in bank. An order directing cause to be heard in bank does not imply that the cause shall be re-argued. Unless re-argument is ordered *the cause may be examined, modi-*

fied, etc., without re-argument. The court has entire control of the case during the thirty days next after a decision by a department. *Niles v. Edwards*, 95 Cal. 41.

In cases of equal division among the justices qualified to sit, in any cause, a judgment of affirmance follows *ex necessitate rei*. *Luco v. De Toro*, 88 Cal. 26.

Section 45, Code of Civil Procedure, requiring that an order granting a rehearing after a judgment of the court in bank shall be in writing, signed by five justices, is unconstitutional. The court has power to act by a constitutional majority of its members in all cases, and the legislature cannot require the concurrence of more than a majority. *In re Jessup*, 81 Cal. 409, Works, J., dissenting.

A judgment by a department does not become final until the expiration of thirty days thereafter unless the chief justice and two associate justices approve it. *Hog's Back Con. M. Co. v. New Basil Con. G. M. Co.*, 65 Cal. 22.

That any four justices may sit in any department and the chief justice may sit in either department indicates that the word "may" was intended to expressly "declare" that these clauses are not mandatory, and no reason is perceived why it was not so used and intended in section 16, article XII. *National Bank v. Superior Court*, 83 Cal. 494.

Although a petition for rehearing had been filed with the clerk of the court in Los Angeles prior to the expiration of thirty days, the re-

hearing must be denied because the petition did not reach the court until one day after the time (30 days) within which an order granting a rehearing could be made. *Durgin v. Neale*, 82 Cal. 595.

The act of March 12, 1885 [Stats. p. 101, and Stats. 1889, p. 13], creating Supreme Court commissioners, are not unconstitutional, as they do not confer on the commissioners the power to decide or render judgment. *People v. Hayne*, 83 Cal. 111.

The constitution of the state and the rule of court making a judgment rendered in the Supreme Court final unless a rehearing is granted within thirty days, do not make any distinction between those of appellate and those of original jurisdiction; and the provisions of the Code of Civil Procedure regulating new trials have no application to proceedings originating in the Supreme Court. *Granger's Bank v. Superior Court*, 101 Cal. 199.

SECTION 3. The chief justice and the associate justices shall be elected by the qualified electors of the state at large at the general state elections, at the times and places at which state officers are elected; and the term of office shall be twelve years, from and after the first Monday after the first day of January next succeeding their election; *provided*, that the six associate justices elected at the first election shall, at their first meeting so classify themselves, by lot, that two of them shall go out of office at the end of four years, two of them at the end of eight years, and two of them at the end of twelve years, and an entry of such classification shall be made in the minutes of the court in bank, signed by them, and a duplicate thereof shall be

filed in the office of the secretary of state. If a vacancy occur in the office of a justice the governor shall appoint a person to hold the office until the election and qualification of a justice to fill the vacancy, which election shall take place at the next succeeding general election, and the justice so elected shall hold the office for the remainder of the unexpired term. The first election of the justices shall be at the first general election after the adoption and ratification of this constitution.

Const. 1849, Art. VI, Sec. 3.

Articles III and VI are controlled by section 20 of article XX, in so far that the terms of superior judges shall begin on the first Monday after the first day of January after their election, it being intended that all officers of the state should take office on the same day. *Merced Bank v. Rosenthal*, 99 Cal. 39.

Referred to in *People v. Hayne*, 83 Cal. 112, and in *Barton v. Kalloch*, 56 Cal. 101, and in *People ex rel Lynch v. Budd*, 114 Cal. 168.

SECTION 4. The Supreme Court shall have appellate jurisdiction in all cases in equity, except such as arise in justices' courts; also, in all cases at law which involve the title or possession of real estate, or the legality of any tax, impost, assessment, toll or municipal fine, or in which the demand, exclusive of interest, or the value of the property in controversy, amounts to three hundred dollars; also, in cases of forcible entry and detainer, and in proceedings in insolvency, and in actions to prevent or abate a nuisance, and in all such probate matters as may be provided by law; also, in all criminal cases prosecuted by indictment, or information in a court of record on questions of law alone. The court shall also have power to issue writs of mandamus, certiorari, prohibition and *habeas corpus*, and all other writs necessary or

proper to the complete exercise of its appellate jurisdiction. Each of the justices shall have power to issue writs of *habeas corpus* to any part of the state, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself, or the Supreme Court, or before any Superior Court in the state, or before any judge thereof.

Const. 1849, Art. VI, Sec. 4.

In an action to recover one hundred dollars paid by plaintiff under an agreement that defendant would locate plaintiff on vacant government land, the pleadings and record in the justice's court did not sufficiently show that the title or right of possession would necessarily be involved. *Held*, if such question became involved the justice had no jurisdiction to try it, and should have certified the case to the Superior Court. When defendant appealed the case to the Superior Court on questions of law and fact, and on trial *de novo* the question of possession and right of possession became involved by evidence that the land was not vacant but was already occupied by a third party, the Superior Court had jurisdiction of the parties and original jurisdiction of the particular issue raised and an appeal would lie from its judgment to the Supreme Court. If the title or possession is so involved that it must be decided in order to determine the case, the Superior Court has original, and the Supreme Court has appellate jurisdiction whether the involution may be said to be merely incidental or not. [*Copertini v. Oppermann*, 76 Cal. 181; *Holman v. Tay-*



lor, 31 Cal. 341.] *Hart v. Carnall-Hopkins Co.* Opinions filed June 16, 1894.

Where an administratrix is ordered imprisoned for contempt in refusing to pay a claim against the estate, which claim has been allowed by the court and ordered paid, and where the administratrix had prior to the contempt proceedings appealed from the order allowing the claim, *Held*, an appeal lies from such order [Section 963 Code of Civil Procedure], irrespective of the amount involved, and pending such appeal the administratrix could not be punished for contempt for not paying the claim. *Ruggles v. Superior Court*, Beatty, C. J., dissenting. Opinion filed June 15, 1894.

The general rule is well established that appeals can only be taken in such probate proceedings as are mentioned in subdivision 3 of section 963 Code of Civil Procedure. *In re Wakerly*, 94 Cal. 353. And in all cases where the Superior Court, sitting in probate, is authorized to hear a motion for new trial, an appeal will lie from the order thereon. *Estate of Bauquier*, 88 Cal. 303. Also, *In re Moore*, 86 Cal. 59; *In re Ohm*, 82 Cal. 160.

No appeal lies from an order of Superior Court refusing to remove an administrator. *Estate of Moore*, 68 Cal. 394.

There is no appellate jurisdiction in cases of contempt. *In re Vance*, 88 Cal. 262, approving *Tyler v. Connolly*, 65 Cal. 30, and *Sanchez v. Newman*, 70 *Id.* 210. See also, *In re Ohm*, 82 Cal. 160.

*An appeal from order of Superior Court dis-*

missing proceeding in *certiorari* and affirming judgment of a justice's court, in a matter involving less than three hundred dollars, will be dismissed by Supreme Court, though the objection to jurisdiction of this court is not raised by counsel. *Bienefeld v. Fresno M. Co.*, 82 Cal. 425.

The appellate jurisdiction is not controlled by the amount of counter claim set up in an answer. Where the action is brought on a money demand exceeding three hundred dollars, the *ad damnum* clause in the complaint is the test of jurisdiction. *Lord v. Goldberg*, 81 Cal. 596.

An action to try the right to hold the office of member of the board of health of San Francisco, under sections 802-810, Code of Civil Procedure is in the nature of *quo warranto*, and also embraces a money demand exceeding \$300, since a fine of \$5000 may be imposed, and upon both grounds the Supreme Court has appellate jurisdiction. [Distinguishing *Houghton's* appeal, 42 Cal. 36. *People v. Perry*, 79 Cal. 105.] As to nature of the proceeding in contested election cases and appellate jurisdiction, citing numerous authorities, see *Lord v. Dunster*, 79 Cal. 477.

An action for divorce is a case in equity. The jurisdiction over appeals is as broad as is the original jurisdiction in matters of equity, and an appeal lies to the Supreme Court from judgment of divorce rendered by Superior Court. An order allowing alimony and counsel fees, *pendente lite*, is a definite judgment, 6'

independent of the result of the divorce proceeding, and is appealable, but being a matter resting in the discretion of the court making the order, it will not be disturbed by the appellate court unless clearly a palpable abuse of discretion. *Sharon v. Sharon*, 67 Cal. 197.

The legislature having failed to provide a mode of appeal in cases where the constitution has conferred the right to appeal, the Supreme Court will adopt a suitable mode. Sections 1235-1246, Penal Code, prescribe the mode of appeal in all cases amounting to felony, but the constitution authorizes appeal in all cases prosecuted by indictment or information. *People v. Jordan*, 65 Cal. 644.

Where the action involves the right of defendants to possess the lands claimed as a toll road, an appeal to Supreme Court will lie. *People v. Horsely*, 65 Cal. 381.

Appeal does not lie to Supreme Court in cases of contempt, even though the amount of fine exceeds three hundred dollars, and although such proceedings have been classed as "criminal." No appeal lies in a criminal case unless it is prosecuted by information or indictment. *Tyler v. Connolly*, 65 Cal. 28.

An appeal does not lie to the Supreme Court from the judgment of the Superior Court affirming the judgment of a police court in a criminal case, it not being a case "prosecuted by indictment or information in a court of record." *People v. Meiggs Wharf Co.*, 65 Cal. 99.

An application, bearing the marks of an

original suit for injunction will not be entertained, in an action already on appeal in the Supreme Court. There being no impediment to the appeal, such writ is not required "in aid" of appellate jurisdiction. *Swift v. Shepard*, 64 Cal. 423, and *Santa Cruz Gap T. Co., v. Santa Clara County*, 62 Cal. 40.

The amount sued for is the test of jurisdiction, and if that exceeds three hundred dollars exclusive of interest, the Superior Court has jurisdiction, and no matter what be the amount of judgment in such case in Superior Court, appeal will lie to the Supreme Court. *Dashiell v. Slingerland*, 60 Cal. 653.

Of case of indictment of new city hall commissioners of San Francisco, for misdemeanors in office, the Supreme Court had appellate jurisdiction. *People v. Kalloch*, 60 Cal. 113.

Under the former constitution and also under the present, the Supreme Court has jurisdiction of appeals upon questions of law alone, in such criminal cases as can come before it. *People v. Smallman*, 55 Cal. 185.

The section confers original jurisdiction upon the Supreme Court to issue writs of mandamus, *certiorari* and prohibition. The constitution of 1849 gave original jurisdiction to issue writs of habeas corpus only. [*People v. Turner*, 1 Cal. 144; *White v. Lightwell*, *Id.* 347; *Cowell v. Buckalew*, 14 *Id.* 642.] The constitution of 1863, contained the clause: "The courts shall also have power to issue writs of mandamus, *certiorari*, prohibition and *habeas corpus*, and also all writs neces-

sary or proper to the complete exercise of its appellate jurisdiction." In *Kiggins v. Houghton*, 25 Cal. 261, it was said this language conferred original jurisdiction as to said writs, since the language employed indicates an intention to change the conditions formerly existing, and the court already had power to issue said writs in aid of its appellate jurisdiction, and although the language is changed in the present constitution, it is held that the intention to give the new court original jurisdiction to issue said writs is apparent, in view of the settled construction given the former constitution. *Hyatt v. Allen*, 54 Cal. 353, Thornton, J., dissenting.

Referring to Appeal of Houghton, 42 Cal, 35, it is held, in addition to what is said in that case, that "special cases or proceedings" are not included in "cases at law," in which the Supreme Court is given jurisdiction, because, in the fifth section of article VI, special cases and proceedings are spoken of as constituting a separate and distinct class from cases at law. In this section (4) are mentioned all the classes of civil cases in which the Superior Court is given original jurisdiction, [by Sec. 5, Art. VI] except actions for divorce and annulment of marriage, and special cases and proceedings, and except also, that the appellate jurisdiction of the Supreme Court is declared to extend to probate matters, only where an appeal is provided by law. *Bixler's Appeal*, 59 Cal. 550.

*The former constitution [Sec. 4, Art. VI]*

contained the same language concerning writs of prohibition, mandamus and *certiorari*. It was decided in *Maurer v. Mitchell*, 53 Cal. 291, that the writ of prohibition mentioned in the constitution is the writ of prohibition as known at common law—an original remedial writ provided as a remedy for the encroachment of jurisdiction. Its office was to restrain subordinate courts and inferior judicial tribunals from exceeding their jurisdiction. The legislature in amending section 1102, Code of Civil Procedure, had no authority to extend the application of the writ to arrest the proceedings of any tribunal, corporation, board or person “whether exercising judicial or ministerial functions.” *Cameron v. Kenfield*, 57 Cal. 550.

The Supreme Court has appellate jurisdiction in all such probate matters as may be provided by law. Under section 963 of Code of Civil Procedure, an appeal may be taken from an order directing the payment of a debt or claim, and the statute makes no difference as to the amount thereof. When an appeal is taken from such order the administrator cannot be punished for contempt in not obeying the order to pay. *Ex parte Orford*, 102 Cal. 657.

Section 18 of Art. IV of the constitution, after providing that certain state officers shall be subject to impeachment for misdemeanor in office, declares: “All other civil officers shall be tried for misdemeanor in office in such manner as the legislature may provide.”

By section 772, Penal Code, the legislature has provided a manner, and it not being by means of indictment or information, there can be no appeal to the Supreme Court in proceedings instituted under that section. See also section 682 Penal Code. *In re Curtis*, 108 Cal. 662.

As to *certiorari* in contempt case for newspaper publications. *McClatchy v. Superior Court*, 119 Cal. 414.

The former constitution having been judicially construed to empower the legislature to provide for appeals to the Supreme Court in "special" civil proceedings of a summary character, its language re-enacted in the present constitution will be given the same construction. *Morton v. Broderick*, 118 Cal. 474.

SECTION 5. The Superior Court shall have original jurisdiction in all cases in equity, and in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand, exclusive of interest or the value of the property in controversy, amounts to three hundred dollars, and in all criminal cases amounting to felony, and cases of misdemeanor not otherwise provided for; of actions of forcible entry and detainer; of proceedings in insolvency; of action to prevent or abate a nuisance; of all matters of probate; of divorce and for annulment of marriage, and of all such special cases and proceedings as are not otherwise provided for. And said court shall have the power of naturalization, and to issue papers therefor. They shall have *appellate jurisdiction* in such cases arising in justices' *and other inferior courts* in their respective coun-

ties as may be prescribed by law. They shall be always open (legal holidays and non-judicial days excepted), and their process shall extend to all parts of the state; provided, that all actions for the recovery of the possession of, quieting the title to, or for the enforcement of liens upon real estate, shall be commenced in the county in which the real estate, or any part thereof affected by such action or actions, is situated. Said courts and their judges, shall have power to issue writs of *mandamus*, *certiorari*, prohibition, *quo warranto*, and *habeas corpus*, on petition by or on behalf of any person in actual custody in their respective counties. Injunctions and writs of prohibition may be issued and served on legal holidays and non-judicial days.

The appellate jurisdiction of the Superior Court is defined by this section, and it has no appellate jurisdiction except such as is given by the constitution; in a suit involving merely a money demand, the court has no appellate jurisdiction unless the sum involved exceeds three hundred dollars. *Henigan v. Irvin*, 110 Cal. 38. See also *Griswold v. Pieratt*, 110 Cal. 261 and notes under Sec. 5, Art. VI *infra*.

No appeal lies to the Superior Court from an order made by a justice's court in proceeding supplementary to execution, in which the justice directs the application of designated property to satisfaction of the judgment. *Wells v. Torrance*, 119 Cal. 438.

The jurisdiction of the Superior Court of proceedings in insolvency is not divested by bank commissioner's act of March 30, 1878, [Stats. p. 740] or amendments thereto, [Stats. 1887-8, p. 90] and said acts are not unconst-



stitutional. How far the acts of the commissioners may be controlled or reviewed is not decided. *People v. Superior Court*, 100 Cal. 105.

An action to determine plaintiff's right to waters of a spring on defendant's land and to maintain pipes for conducting said waters, is an action to quiet title to realty, and jurisdiction of said action is in the Superior Court of the county in which the land is situated. *Pacific Yacht Club v. Sausalito B. W. Co.*, 98 Cal. 487—following *Fritts v. Camp*, 94 Cal. 394.

In an action to enjoin defendants from dumping mining *debris* into a creek above plaintiff's premises, defendant by his answer justifying under an adverse claim of easement, the trial must be had in the county where plaintiff's land is situate. The action is in effect, one to quiet plaintiff's title against defendant's claim of easement. *Fritts v. Camp*, *supra*.

In the phrase "tax, impost, assessment, toll," etc., the word assessment does not include assessments made by private corporations under section 331 Civil Code, but refers to such as are authorized for purposes of revenue and taxation by municipal or other public corporations. *Arroya D. & W. Co. v. Superior Court*, 92 Cal. 47.

Where in a contract for sale of land a deposit or part payment is made, the sale depending upon the question whether the title *proves* good, and deposit to be repaid if title

is not good, the jurisdiction to try an action to recover such deposit is in the Superior and not in the justice's court, even though the amount is less than three hundred dollars, as it involves a question of title to land. [Schroeder v. Witram, 66 Cal. 636, criticised.] Copertini v. Opperman, 76 Cal. 181.

In an action to recover one hundred dollars paid by plaintiff under an agreement that defendants would locate plaintiff on vacant government land, the pleadings and record in the justice's court did not sufficiently show that the title or right of possession would necessarily be involved. *Held*, if such question became involved, the justice had no jurisdiction to try it, and should have certified the case to the Superior Court. Defendant appealed to the Superior Court on questions of law and fact, and in the Superior Court the question did become involved by reason of evidence of occupancy by a third person, and the Superior Court had jurisdiction of the parties and of the particular issue raised, and the Superior Court having acquired original jurisdiction, an appeal would lie to the Supreme Court. The Supreme Court has jurisdiction in all cases at law which involve the title or possession of real estate under section 4, article VI of the constitution without excepting cases where the title is only incidentally involved. If the title or possession is so involved that it must be decided in order to determine the case, the *Superior Court has original and the Supreme*

Court appellate jurisdiction whether the involvement may be said to be merely incidental or not. [Copertini *v.* Opperman, *supra*, and Holman *v.* Taylor, 31 Cal. 341.] Hart *v.* Carnall-Hopkins Co., opinion filed June 16, 1894.

Jurisdiction in equitable action for specific performance of contract to convey land is in Superior Court. Hall *v.* Rice, 64 Cal. 443.

That Superior Court has not jurisdiction on appeal to try the case unless the justice's court had original jurisdiction. See Ballerino *v.* Bigelow, 90 Cal. 500.

Section 1664, Code of Civil Procedure, proceedings in the nature of an action to determine heirship. Not unconstitutional. The Superior Court is properly given jurisdiction. Such proceedings clearly relate to "probate." *In re* Burton, 93 Cal. 459.

Jurisdiction in cases of unlawful detainer cannot be given to justice's courts by mere allegations in the complaint. The jurisdiction is in the Superior Court unless in fact the rental value does not exceed twenty-five dollars per month, and unless the damages claimed do not exceed two hundred dollars. Ballerino *v.* Bigelow, 90 Cal. 500.

The Superior Courts are successors of the former county courts. Smith *v.* Hill, 89 Cal. 122, 128.

The jurisdiction of the Superior Court as to the amount of three hundred dollars is to be determined by reference to the *ad damnum clause* of the complaint. Where the demand

was for \$362.84, the value of wheat, and \$100.00 expended in pursuit of the property, the demand exceeded \$300.00, and Superior Court had jurisdiction. *Greenbaum v. Martinez*, 86 Cal. 459. [Citing *Dashiel v. Slingerland*, 60 Cal. 653; *Bailey v. Sloan*, 65 Cal. 387, and *Lord v. Goldberg*, 81 Cal. 599.]

The section is cited to effect that suit to foreclose a mortgage must be brought in the county where the land is situate, in *Campbell v. West*, 86 Cal. 197, and as to all liens, in *Goldtree v. McAlister*, 86 Cal. 93-105. And as to jurisdiction over corporation, in *Nat. Bank v. Superior Court*, 83 Cal. 491; *Chase v. R. R. Co.*, 83 Cal. 468-473; *Baker v. Fireman's Fund Ins. Co.*, 73 Cal. 183.

Superior Courts are given jurisdiction, in the broadest terms, of actions in equity. *Water Works v. San Francisco*, 82 Cal. 286-305. As to actions relating to office, and in nature of *quo warranto*, in *People v. Stanford*, 77 Cal. 361. [Department opinion, p. 376.]

Complaint in justice's court for conversion, alleged the value of the property at two hundred and fifty dollars and alleged damages in the further sum of fifty dollars, the prayer being for two hundred and ninety-nine dollars. Demurrer to jurisdiction overruled, judgment for plaintiff according to prayer. Defendant appealed to Superior Court and renewed his demurrer. Overruled. Defendant then applied to Supreme Court to prohibit the Superior Court from proceeding with trial of the case. *Held, the ad damnum clause of complaint, or*

the value of the property, determined jurisdiction in favor of justice's court, and whether it had or not, the Superior Court had jurisdiction on appeal to try the case. *Sanborn v. Superior Court*, 60 Cal. 425. [*Contra*, *Ballerino v. Bigelow*, 90 Cal. 500.]

A native of China is not entitled to naturalization, nor can such person, naturalized and admitted to practice as an attorney at law in the highest court of another state, be admitted to practice in the courts of this state. *In re Hong Yen Chang*, 84 Cal. 163.

An action to oust from office a person claiming to be a supervisor of San Francisco, and to recover the five thousand dollar penalty affixed by statute in such cases, is in the nature of *quo warranto*, and it is an action at law involving more than three hundred dollars, and the constitution gives the Superior Court jurisdiction, which is not affected by the provision of the consolidation act, making the supervisors judges of the election, etc., of their members. *People v. Bingham*, 82 Cal. 238.

The jurisdiction of Superior Courts in all such special cases as are "not otherwise provided for," includes cases of eminent domain on behalf of cities and towns. *Bishop v. Superior Court*, 87 Cal. 226.

Special proceedings under the act supplemental to the Wright Act [Stats. 1889, p. 212], providing for confirmation of organization of irrigation districts are proceedings *in rem*, and jurisdiction may be acquired by publication. *Crall v. Board of Directors*, 87 Cal. 684.

The misdemeanor of gaming being "provided for," [Sec. 330 Penal Code] the Superior Court has no jurisdiction to try the accused on an indictment or information for that offense. [Citing *Green v. Superior Court*, 78 Cal. 556; and see also *People v. Joselyn*, 80 Cal. 544; *Ex parte Wallingford*, 60 Cal. 103; *Gafford v. Bush*, 60 Cal. 149.] *People v. Lawrence*, 82 Cal. 182.

The Superior Court in San Francisco has no jurisdiction of misdemeanor of conspiracy. Such jurisdiction being vested in the police court, is otherwise provided for. The common law distinction between high and low misdemeanors has never been recognized in this state, and the legislature has power to vest exclusive jurisdiction over all misdemeanors in inferior courts. *Green v. Superior Court*, 78 Cal. 556.

A penalty "given by statute" and not exceeding \$300, is within the jurisdiction of justices' courts whether its legality be questioned or not, it not being a tax, impost, assessment, toll or municipal fine. *Thomas v. Justices' Court*, 80 Cal. 40.

The constitution, in using the words "Superior Court," is dealing, not with individual Superior Courts as separate and distinct courts and as county establishments, but with a state system of courts. That term is a collective term. *Green v. Superior Court*, 78 Cal. 560.

A case appealed from justices' court to Superior Court of *the same county* cannot be *transferred to another county* for trial on the ground

that defendant is a resident of the latter county. *Gross v. Superior Court*, 71 Cal. 382.

Section 980 of Code of Civil Procedure purporting to authorize such transfer is unconstitutional. *Luco v. Superior Court*, 71 Cal. 555.

These courts shall be always open (legal holidays and non-judicial days excepted) and terms of court are abolished and the legislative enactments are in harmony with the constitution. Sections 73-4, Code of Civil Procedure. *In re Gannon*, 69 Cal. 541.

A jury may be discharged on a legal holiday. [Secs. 134 C. C. P. and 1142 Penal Code.] The constitution does not prohibit all business in the Superior Court on legal holidays, excepting issuing injunctions and writs, but it prohibits the legislature from establishing terms during which only judicial business can be transacted. *People v. Soto*, 65 Cal. 621.

An action to settle a trust in relation to real property, is not required to be brought in the county where the property is situated. *Le Breton v. Superior Court*, 66 Cal. 27.

The provision requiring all actions for recovery of possession of, quieting title to, or enforcement of liens upon real estate, does not apply to actions commenced prior to the adoption of this constitution. *Watt v. Wright*, 66 Cal. 202.

Place of trial of actions for injuries to real property, see section 392, Code of Civil Procedure. *City of Marysville v. North Bloomfield, etc., Co.*, 66 Cal. 343.

An action brought in the District Court in San Francisco prior to the adoption of this constitution, to foreclose a mortgage on lands in Fresno county, was succeeded to by the Superior Court in and for San Francisco, and its decree of foreclosure was valid. The provision of the present constitution requiring such actions to be brought in the county where the land affected is situated, is prospective. [*Gurnee v. Superior Court*, 58 Cal. 38.] *Watt v. Wright*, 66 Cal. 202.

An equitable action to remove trustees under a will, brought in San Francisco, will not be restrained by prohibition on account of real estate held by the trustees located in Santa Barbara, and which may be affected by the action. *More v. Superior Court*, 64 Cal. 345.

The section is prospective only in its effect. An action for recovery of real estate situate in Sonoma county, pending in a District Court in San Francisco, was succeeded to by the Superior Court of San Francisco, and not the Superior Court of Sonoma. Prior to this constitution the action could properly be commenced in San Francisco. *Gurnee v. Superior Court*, 58 Cal. 88. Affirmed in *S. F. S. U. v. Abbott*, 59 Cal. 400.

An action to foreclose the right of vendee under contracts for purchase of land, although construed as for "strict foreclosure," is an action for enforcement of lien, and must be brought in the county where the land is situated. [*Urton v. Wood*, 87 Cal. 38; *Pac. Y.*



Club *v.* Sausalito B. W. Co., 98 Cal. 487; Fritz *v.* Camp, 95 Cal. 393.] S. P. R. R. Co. *v.* Pixley, opinion filed June 15, 1894. 37 Pac. Rep. 194.

The section does not provide that the action must be tried, but simply that it must be commenced in the county in which the land is situated, and section 997, Code of Civil Procedure, is not obnoxious to any constitutional provision. *Hancock v. Burton*, 61 Cal. 70.

As to all cases in equity, the same jurisdiction that was conferred by the former constitution [Sec. 6, Art. VI] is conferred by the new constitution on the Superior Courts. And the jurisdiction of our courts in equity is to be tested by reference to the jurisdiction actually exercised by the court of chancery in England when our constitution was adopted, except so far as such jurisdiction is modified by our constitution or the constitution of the United States. *Estate of Hinckley*, 58 Cal. 585.

By operation of the constitution itself, the Superior Court became vested with jurisdiction of all cases of felony, and was the successor of all other courts which had theretofore possessed jurisdiction in such cases. *Ex parte Williams*, 87 Cal. 78; *Smith v. Hill*, 89 Cal. 123-128; *People v. Colby*, 54 Cal. 184.

Where the justice's court has not jurisdiction to try a cause, the Superior Court on appeal has not jurisdiction to try it. *Shealor v. Superior Court*, 70 Cal. 565. *Contra*, *Sanborn v. Contra Costa Co.*, 60 Cal. 427.

Where the sole question presented is whether the amount collected is a legal toll, and not as to an excessive collection, the jurisdiction is in the Superior and not in the justice's court. *Culbertson v. Kinevan*, 68 Cal. 490.

The Supreme Court has appellate jurisdiction of a case involving the alleged right of persons to possess lands claimed to constitute a toll-road as against those who deny the right and refuse to pay toll for passing over the road. *People v. Horsely et als.*, 65 Cal. 381.

In issuing writs of *certiorari*, mandate and prohibition, the Supreme and Superior Courts are peers; both have original jurisdiction. Whether the judgment of each is final is not decided. *Santa Cruz Gap T. Co. v. Santa Clara Co.*, 62 Cal. 40.

Mandamus will not issue to compel an allowance to reporter of Supreme Court of salary exceeding twenty-five hundred dollars per annum, payable monthly. *Smith v. Kenfield*, 57 Cal. 138.

In actions to condemn land for purposes of a railroad, the jurisdiction is in the court of the county where the land is situated. *Cal. So. R. R. Co. v. S. P. R. R. Co.*, 65 Cal. 409, 394.

Prior to the present constitution the code provided for appeals from Justices' Courts to the county courts.

It is held that in an action on a contract to find and locate persons on *vacant government* land, the title to land is involved, and that a

justice's court has no jurisdiction to try the issues. [*Copertini v. Oppermann*, 76 Cal. 181; *Holman v. Taylor*, 31 Cal. 341.] *Hart v. Carnall-Hopkins Co.*, 103 Cal. 142.

There was no specific provision of the legislature providing for appeals from justices' courts to the Superior Court until the act of March 26, 1880 [Stats. p. 53], amending section 974, Code of Civil Procedure, but under section 11, article XXII, of the new constitution, the laws relating to appeals from Justices' Courts were continued in force, and under the new judicial system the Superior Courts have jurisdiction to hear such appeals. *Cal. F. & M. S. Co. v. Superior Court*, 60 Cal. 305.

The Superior Court has no jurisdiction to try cases of petit larceny, even where the grand jury finds indictments for such offense. Petit larceny is not among the misdemeanors "not otherwise provided for." Section 115, Code of Civil Procedure. Whether or not there are other misdemeanors included in that section which are required by the constitution to be prosecuted by information or indictment, not decided. *Ex parte Wallingford*, 60 Cal. 103. Nor of indictment for misdemeanor of keeping open a saloon on Sunday. *Gafford v. Bush*, 60 Cal. 150.

An action to abate a nuisance was a suit in equity under the former constitution, and its character was not changed upon the adoption of the new constitution. Such action pending in the District Court at the adoption of the

present constitution was succeeded to by the Superior Court. Learned *v. Castle*, 67 Cal. 41.

The offense of nuisance defined in section 370 Penal Code, is, according to section 377, same code, within jurisdiction of Superior Court. In matter of Kurtz 68 Cal. 412.

Upon trial under an information for assault with deadly weapon and verdict of guilty of assault, the Superior Court has jurisdiction to pronounce sentence. The information gave the court jurisdiction, and the offence of which defendant was found guilty was within the scope of that charged in the information. *Ex parte Donahue*, 65 Cal. 474. See also *People v. Fahey*, 64, Cal. 342.

An action to foreclose a vendor's lien on land must be brought in the county where the land is situated, and if brought in a county in which no part of the land is situated, a demurrer on the ground that the court has no jurisdiction should be sustained. *Southern Pac. R. R. Co., v. Pixley*, 103 Cal. 119.

The act of May 29, 1893 [Stats. p. 180, Sec. 15], creating the county of Kings and providing for the collection of taxes for the year 1892, within the territory of the new county, and directing to whom said taxes should belong, and requiring the collector of that county to be furnished by the tax collector of the old county with the tax list, is not unconstitutional either for defective statement

in the title of the act, nor as special legislation. *Kings County v. Johnson*, 104 Cal. 199.

An action for foreclosure of mortgage must be commenced in county where the land or some part thereof is situated and if commenced in some other county a judgment in such action would be void. *Rogers v. Cady*, 104 Cal. 292.

The constitution does not command that the action must be *tried*, but that it must be commenced in the county where the land, or some part thereof is situated. *Duffy v. Duffy*, 104 Cal. 604.

The jurisdiction of the state courts in cases of homicide, extends to all places in the state, except as provided in section 8, article I, Constitution United States "all places *purchased* by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, docks, yards, and other needful buildings." *People v. Collins*, 105 Cal. 508.

The place of trial is not an element going to the jurisdiction of the court, but is a matter of legislative regulation. The constitution only requires that actions must be *commenced* in the county where the property is situated. [Sec. 392 C. C. P.] *Security Loan etc. Co. v. Kauffman*, 108 Cal. 222.

The section is alluded to in *Petaluma S. Bank v. Superior Court*, 111 Cal. 498 in connection with the joining of a receiver appointed by the court as a defendant in a *supposed case of foreclosure*.

Neither the Superior Court nor the Supreme Court on appeal, has jurisdiction to try the question of indebtedness upon a mere money demand, where the sum involved does not exceed three hundred dollars. A cross-complaint for a less sum is therefore not permissible. *Griswold v. Pieratt*, 110 Cal. 261. See also *Henigan v. Irvin*, 110 Cal. 38

The service of a proposed statement on motion for new trial is not void because served on Sunday or a legal holiday, although it might be served on the next day, nor is such service "judicial business" within the meaning of the constitution. *Reclamation Dist. v. Hamilton*, 112 Cal. 605.

This section is referred to in *People ex rel Lynch v. Budd*, 114 Cal. 168.

Superior Courts are in effect always open for the transaction of business: The intervals when no business is being transacted being regarded as "recesses," and by "sessions" is meant the time during which the court is in fact engaged. Secs. 1112-1118 C. C. P.

*Falltrick v. Sullivan*, 119 Cal. 615.

The amount sued for determines the jurisdiction of the court. The prayer of the complaint does not determine the question of jurisdiction independent of the facts alleged. *Lehnhardt v. Jennings*, 119 Cal. 198.

[*An amendment to be known as section 5 1-2 of this article was voted on at the general election, November 8, 1898.*]

SECTION 6. There shall be in each of the organized counties, or cities and counties of the state, a Superior Court, for each of which at least one judge shall be elected by the qualified electors of the county, or city and county, at the general state election, provided, that until otherwise ordered by the legislature, only one judge shall be elected for the counties of Yuba and Sutter, and that in the city and county of San Francisco there shall be elected twelve judges of the Superior Court, any one or more of whom may hold court. There may be as many sessions of said court, at the same time, as there are judges thereof. The said judges shall choose from their own number a presiding judge, who may be removed at their pleasure. He shall distribute the business of the court among the judges thereof, and prescribe the order of business. The judgments, orders and proceedings of any session of the Superior Court, held by any one or more of the judges of said court, respectively, shall be equally effectual as if all the judges of said respective courts presided at such session. In each of the counties of Sacramento, San Joaquin, Los Angeles, Sonoma, Santa Clara and Alameda there shall be elected two such judges. The term of office of judges of the Superior Courts shall be six years from and after the first Monday of January next succeeding their election; provided, that the twelve judges of the Superior Court, elected in the city and county of San Francisco at the first election held under this constitution, shall at their first meeting, so classify themselves, by lot, that four of them shall go out of office at the end of two years, and four of them shall go out of office at the end of four years, and four of them shall go out of office at the end of six years, and an entry of such classification shall be made in the minutes of the court, signed by them, and a duplicate thereof filed in the office of the secretary of state. The first election of judges of the Superior Courts shall take place *at the first general election held after the adoption and ratification of this constitution.* If a vacancy

occur in the office of judge of a Superior Court, the governor shall appoint a person to hold the office until the election and qualification of a judge to fill the vacancy, which election shall take place at the next succeeding general election, and the judge so elected shall hold office for the remainder of the unexpired term.

The term of Superior Court judges being six years, their term of office commences under article 20, section 20, on first Monday after first day of January next following their election. *Merced Bank v. Rosenthal*, 99 Cal. 39.

When a new judgeship is created by the legislature under section 9, article VI, the first judge appointed to said office will hold until the next election by the people, and qualification of the person elected; and the first person so elected will hold office for six years, commencing on the first Monday after the first day of January next after his election. A person appointed by the governor to fill a vacancy in such office, holds under his appointment only until the next general election, and the person then elected will hold office until the expiration of the term in which the vacancy had occurred. *People v. Waterman*, 86 Cal. 27.

Section 14 of the act of March 11, 1893 [Stats. p. 168], creating the county of Madera, so far as it attempts to provide that the judge of the Superior Court elected under that act shall hold his office until after the first Monday in January, 1897, is in conflict with this section of the constitution. *People v. Markham*, 104 Cal. 234.



The division of the Superior Court into departments is an imaginary one. The constitution provides that there may be as many sessions of the court as there are judges. The judges hold but one and the same court, and the jurisdiction they exercise in any cause is that of the court and not of the individual. The judges of the Superior Court in San Francisco may properly adopt rules for the guidance of the presiding judge in the matter of distributing the business of the court, so long as such rules do not violate any provision of law, but a violation of such rules cannot affect the jurisdiction of the court. *White v. Superior Court*, 110 Cal. 62.

As to *certiorari* in contempt case for newspaper publication, *McClatchy v. Superior Court*, 119 Cal. 414.

SECTION 7. In any county, or city and county, other than the city and county of San Francisco, in which there shall be more than one judge of the Superior Court, the judges of such court may hold as many sessions of said court at the same time as there are judges thereof, and shall apportion the business among themselves as equally as may be.

See notes under section 6, *supra*.

SECTION 8. A judge of any Superior Court may hold a Superior Court in any county, at the request of a judge of the Superior Court thereof, and upon the request of the governor it shall be his duty so to do. But a cause in a Superior Court may be tried by a judge pro tempore, who must be a member of the bar, agreed upon in writing by the parties *litigant* or their attorneys of record, approved by the court, and sworn to try the cause.

Such request of another judge may be presumed, although it appears that a request of the governor is also made and is two days later than acts of the requested judge. *People v. Ah Lee Doon*, 97 Cal. 171.

A judge of one court, at the request of the judge of the court where the proceeding is pending, may hold the court a portion of the time during which the proceedings are had. *Eureka L. and Y. Co. v Superior Court*, 66 Cal. 311, 316.

SECTION 9. The legislature shall have no power to grant leave of absence to any judicial officer; and any such officer who shall absent himself from the state for more than sixty consecutive days shall be deemed to have forfeited his office. The legislature of the state may at any time, two-thirds of the members of the senate and two-thirds of the members of the assembly voting therefor, increase or diminish the number of judges of the Superior Court in any county, or city and county, in the state; provided, that no such reduction shall affect any judge who has been elected.

Const. 1849, Art. VI, Sec. 5. [Leave of absence not permissible.]

Under act of March 5, 1887 [Stats. p. 19], the legislature increased the number of judges for San Bernardino county from one to two, and authorized the governor to appoint a judge to said office to hold until the first Monday after the first day of January, 1889, and also provided at the next general election a judge should be elected to said office to hold office for the term prescribed by the constitution and law. *Held*, that the judge so elected at

the general election in November, 1888, should hold his office for six years from the first Monday after the first day of January, 1889, according to the "constitution and law." *The People v. Waterman*, 86 Cal. 27.

As to election of judges, see *Barton v. Kallach*, 56 Cal. 101.

Dereliction of duty in office may be punished, if the legislature so directs, as a crime, but dereliction may also work a forfeiture of office under civil process. *Morton v. Broderick*, 118 Cal. 483.

SECTION 10. Justices of the Supreme Court, and judges of the Superior Courts, may be removed by concurrent resolution of both houses of the legislature, adopted by a two-thirds vote of each house. All other judicial officers, except justices of the peace, may be removed by the senate on the recommendation of the governor, but no removal shall be made by virtue of this section, unless the cause thereof be entered on the journal, nor unless the party complained of has been served with a copy of the complaint against him, and shall have had an opportunity of being heard in his defense. On the question of removal, the ayes and noes shall be entered on the journal.

Const. 1849, Art. IV, Sec. 19. [Impeachment.]

SECTION 11. The legislature shall determine the number of justices of the peace to be elected in townships, incorporated cities and towns, or cities and counties, and shall fix by law the powers, duties, and responsibilities of justices of the peace; provided, such powers shall not in any case trench upon the jurisdiction of the several courts of record, *except that said justices shall have concurrent jurisdiction with the Superior Courts in cases of*

forcible entry and detainer, where the rental value does not exceed twenty-five dollars per month, and where the whole amount of damages claimed does not exceed two hundred dollars, and in cases to enforce and foreclose liens on personal property when neither the amount of the liens nor the value of the property amounts to three hundred dollars.

Const. 1849, Art. VI, Sec. 9.

To entitle justice's court to jurisdiction in unlawful detainer, the plaintiff must not claim more than \$200 damages, and the rental value must not in fact exceed twenty-five dollars per month. Jurisdiction cannot be given by the manner of framing the complaint. *Ballerino v. Bigelow*, 90 Cal. 502.

Under section 112 Code of Civil Procedure, the justices' courts have jurisdiction of all penalties "given by statute" which are under \$300 whether the legality of the penalty is involved or not, but in case of "municipal fines" they have not jurisdiction if the legality is denied by the answer. *Thomas v. Justices' Court*, 80 Cal. 40.

Where, in a contract for purchase of land, a part payment or deposit of less than three hundred dollars is made, the sale depending upon whether the title is good, and the money to be repaid if title is not good, the jurisdiction of an action to recover the deposit is in the Superior Court, as a question of title to land is involved therein. *Schroeder v. Wittram*, 66 Cal. 636, criticised. *Copertini v. Oppermann*, 76 Cal. 181. And see *Hart v. Carnall-Hopkins Co.*, 103 Cal. 132.

The legislature has given jurisdiction of petit larceny to the justices' courts, and the Superior Court has no jurisdiction of that offense; and it is not a misdemeanor "not otherwise provided for," under section 5, article VI, constitution. Section 915, Penal Code, also provides that the grand jury shall inquire into all offenses committed or triable in the county, but it does not follow that the jurisdiction of the offense is determined by the form of the procedure. *Ex parte Wallingford*, 60 Cal. 103. The same is true of misdemeanor of keeping open a saloon on Sunday. [*Ex parte McCarthy*, 53 Cal. distinguished.] *Gafford v. Bush*, 60 Cal. 150.

Justices of the peace are as much judicial officers as are justices of the Supreme Court. Their numbers, powers, duties and responsibilities are to be fixed by the legislature. [Sec. 1, Art. VI.] They were among the officers to be elected in 1879—their term being shortened one year—and thereafter, on the even numbered years. The legislature has adopted the date of electing members of the legislature as the day for general election, by a valid and constitutional act amending section 1041, Political Code, [Amendments 1880, p. 77] and amendments to sections 85, 103, 110, Code of Civil Procedure. [Amendments 1880, p. 21.] *Coggins v. City of Sacramento*, 59 Cal. 599, [approving *People v. Ransom*, 58 Cal. 558; *Bishop v. Council of Oakland*, *Id.* 572; *Jenks v. Same*, *Id.* 576.] And that they are included

in section 20, article XX, see *McGrew v. Mayor*, etc., 55 Cal. 611.

When the constitution conferred upon the Superior Court jurisdiction of misdemeanors, it was of those misdemeanors not otherwise provided for, and when the legislature exercised the power vested in it to "otherwise provide for" other misdemeanors, and conferred jurisdiction upon justices' courts of certain misdemeanors, that jurisdiction became exclusive. [Conspiracy, Sec. 182, Penal Code.] Paterson, J., dissenting. *Green v. Superior Court*, 78 Cal. 556. See also *Ex parte Donohue*, 65 Cal. 474.

As to the election of justices. *Bishop v. City of Oakland*, 58 Cal. 572.

The office of justice of the peace is a creation of the constitution, and cannot be created by any city charter; such offices are filled by election at general state elections, even in cities, and not at a city election. Such officers are township, not city officers, and vacancies in the office must be filled by the board of supervisors of the county. *People v. Sands*, 102, Cal. 14. But see *ex parte Sparks*, 120 Cal. 399, and section 8½ of article XI *infra*.

Sections 1 and 11 of article VI, and section 3 of article XXII, being construed together it is held that the justices' of the peace in San Francisco have their term of office fixed by the consolidation act and its amendments, as existing at the time of the adoption of the constitution of 1879, and that their term of office was not affected by the county government

act of 1893. The term of office is a distinct proposition from the powers, duties and responsibilities of officers. *Kahn v. Sutro*, 114, Cal. 318.

SECTION 12. The Supreme Court, the Superior Courts, and such other courts as the legislature shall prescribe, shall be courts of record.

Const. 1849, Art. VI, Sec. 9.

SECTION 13. The legislature shall fix by law the jurisdiction of any inferior courts which may be established in pursuance of section one of this article, and shall fix by law the powers, duties and responsibilities of the judges thereof.

Const. 1849, Art. VI, Sec. 10.

Inferior courts in cities can only be established by bill in the manner provided by sections 15, 16, article IV, and are not established by means of a charter for such cities which is only approved by a majority of the members elected to both houses of the legislature. Persons acting as judges of such courts under such charter are not officers *de facto* nor *de jure*. *People v. Toal*, 85 Cal. 333. Beatty, C. J., dissenting. [This decision is referred to in *Security Sav. Co. v. Hinton*, 97 Cal. 216.] See section 8½ article XI *infra*.

This section is referred to with other sections of this article, and it is said they vest in the inferior courts such jurisdiction as may be conferred upon them, so long as the jurisdiction does not infringe upon the jurisdiction expressly conferred by the constitution itself upon some other court. *Green v. Superior*

Court, 78 Cal. 556-560. See also *Ex parte Henshaw*, 73 Cal. [dissenting opinion of Thornton, J.] 507.

A police judge is a judicial officer, but he is also a municipal officer. *Ex parte Henry*, 62 Cal 557.

Referred to in dissenting opinion of Justice McFarland, in *ex parte Sparks*, 120 Cal. 401.

SECTION 14. The legislature shall provide for the election of a clerk of the Supreme Court, and shall fix by law his duties and compensation, which compensation shall not be increased or diminished during the term for which he shall have been elected. The county clerks shall be *ex officio* clerks of the courts of record in and for their respective counties, or cities and counties. The legislature may also provide for the appointment, by the several Superior Courts, of one or more commissioners in their respective counties, or cities and counties, with authority to perform chamber business of the judges of the Superior Courts, to take depositions, and perform such other business connected with the administration of justice as may be prescribed by law.

Const. 1849, Art. VI, Sec. 11.

The legislative amendment of April 23, 1881, to section 755, Political Code, is inoperative as to the compensation of clerk of Supreme Court, whose term of office had commenced before the date of said enactment. *Gross v. Kenfield*, 57 Cal. 626.

The Supreme Court shall be always open for business, but the duties of the clerk are left to be defined by the legislature, and under section 1030, Political Code, he is not required to keep his office open on legal holidays, nor



on any day except between 10 A. M. and 4 P. M. The action of the court does not depend upon the entry of its orders by the clerk, but upon the fact that the orders have been made. *Niles v. Edwards*, 95 Cal. 47.

County clerks were *ex officio* clerks of the District Court in their respective counties, under the former constitution, and under the present constitution county clerks are *ex officio* clerks of the Superior Court in their respective counties. *People v. Hamilton*, 103 Cal. 491.

Section referred to in *Barton v. Kalloch*, 56 Cal. 101.

SECTION 15. No judicial officer, except justices of the peace and court commissioners, shall receive to his own use any fees or perquisites of office.

Const. 1849, Art. VI, Sec. 13.

SECTION 16. The legislature shall provide for the speedy publication of such opinions of the Supreme Court as it may deem expedient, and all opinions shall be free for publication by any person.

Const. 1849, Art. VI, Sec. 14.

SECTION 17. The justices of the Supreme Court and judges of the Superior Court shall severally, at stated times during their continuance in office, receive for their services a compensation which shall not be increased or diminished after their election, nor during the term for which they shall have been elected. The salaries of the justices of the Supreme Court shall be paid by the state. One-half of the salary of each Superior Court judge shall be paid by the state; the other half thereof shall be paid by the county for which he is elected. *During the term of the first judges elected under this constitution, the annual salaries of the justices*

of the Supreme Court shall be six thousand dollars each. Until otherwise changed by the legislature, the Superior Court judges shall receive an annual salary of three thousand dollars each, payable monthly, except the judges of the city and county of San Francisco, and the counties of Alameda, San Joaquin, Los Angeles, Santa Clara, Yuba and Sutter combined, Sacramento, Butte, Nevada and Sonoma, which shall receive four thousand dollars each.

Const. 1849, Art. VI, Sec. 15.

Salary and expenses of office are distinguishable. See *Kinwood v. Soto*, 87 Cal. 394.

SECTION 18. The justices of the Supreme Court and judges of the Superior Courts shall be ineligible to any other office or public employment than a judicial office or employment during the term for which they shall have been elected.

Const. 1849, Art. VI, Sec. 16.

SECTION 19. Judges shall not charge juries with respect to matters of fact, but may state the testimony and declare the law.

Const. 1849, Art. VI, Sec. 17.

A statement copied from *Ram on Facts* as to testimony of children, should not be given as an instruction to jury. Instruction given as to testimony of prosecutrix in case of rape approved. *People v. Wessel*, 98 Cal. 353.

The court properly refused to instruct that if the jury found that the prosecutrix in a seduction case had committed lewd or immodest acts, though not guilty of illicit intercourse, she was not then a woman of previous chaste character. *Such instruction would have been* 7

charging upon matters of fact. *People v. Samonset*, 97 Cal. 448.

After making a statement of evidence, the court instructed the jury: "If these facts all appear to your minds as I have stated them, then your verdict will be for defendants." *Held* not error. *Jones v. Chalfant*, 31 Pac. Rep. 257.

It is error for the trial court to charge a jury that, as a "general rule, the statements of the witnesses as to verbal admissions of a party should be received by the jury with great caution, as that kind of evidence is subject to much imperfection and mistake." Such conclusion being an inference of fact to be made by the jury from the peculiar circumstances of each particular case. *Kaufman v. Maier*, 94 Cal. 269.

During a ruling upon the admissibility of certain evidence, the court said of defendant, in the presence of the jury, "she had contradicted herself several times in the record," to which language defendant excepted. Whereupon the court reiterated the statement, adding, "that is the chief reason why I admit those letters in evidence." *Held*, the court should not have given its opinion to the jury that defendant had sworn falsely. *People v. Willard*, 92 Cal. 482.

A statement by the court of reasons for a ruling on evidence is not addressed to the jury, and if properly called forth by the offers of counsel, and contains no reflection upon

defendant, it is not improper. *People v. McLean*, 84 Cal. 481.

An instruction in which the court said, "My understanding was that that completed the contract," where the record shows that the court had just stated the materiality of the defendant's claim in evidence that the six hundred dollars was paid him as part of the purchase price, assumes the testimony of the party to that fact as true, and the court erred in instructing as to facts. *Vulicevich v. Skinner*, 77 Cal. 239. See also *Hill v. Finigan*, 77 Cal. 267.

Where the instruction declares that "the testimony in the case shows" certain facts which were prejudicial to defendant, the constitutional provision is violated. *The People v. Casey*, 65 Cal. 260.

The court may instruct that testimony has been introduced tending to prove a certain matter. *People v. Perry*, 65 Cal. 568.

An instruction that "proof of the possession of property in the hands of defendant recently after the same property was stolen out of the shop of Vestal, unless the possession of the same is satisfactorily accounted for by the defendant, raises a presumption of guilt against the defendant," violates the constitutional provision against charging the jury with respect to facts. *People v. Mitchell*, 55 Cal. 236.

An instruction that flight of a person accused of crime is a strong circumstance of guilt, *is an instruction upon facts, as such*

presumption is not declared by law. *People v. Wong Ah Ngow*, 54 Cal. 151.

As to what is a proper occasion for giving the instruction relative to the testimony of an accomplice, under subdivision 4, section 2061, Code of Civil Procedure. [Commenting on *Kauffman v. Maier*, 94 Cal. 282, and *People v. O'Brien*, 96 Cal. 171.] *People v. Bonney*, 98 Cal. 278.

A judge cannot be too cautious in a criminal trial in avoiding all interference with the conclusions of the jury upon the facts. [Approving, *People v. Williams*, 17 Cal. 147.] *People v. Gordon*, 88 Cal. 422, 427.

Further examples of improper instruction are given in *People v. Chen Sing Wing*, 88 Cal. 268, where it is added: "This provision is violated whenever a judge so instructs as to force the jury to a particular conclusion upon the whole or any part of the case," etc., quoting from *People v. Ybarra*, 17 Cal. 171. When all the evidence in the case showed that the offense was committed in the night time, no error was committed by the court, saying the evidence as to a burglary showed it had been committed about three or four o'clock in the morning. *People v. McGregor*, 88 Cal. 140. And see *People v. Murray*, 86 Cal. 31; *Low v. Warden*, 77 Cal. 95; *Wheaton v. Insurance Co.*, 76 Cal. 417, 428; *People v. Phillips*, 70 Cal. 61, 68; *Weiderkind v. Tuolumne C. W. Co.*, 65 Cal. 431; *People v. McDowell*, 64 Cal. [dissenting opinion of

Sharpstein, J.] 468; *People v. Ah Oon et al.*, 56 Cal. 188, 193.

An instruction to the jury which correctly states the issues under an indictment for perjury; and further states that if the jury find beyond a reasonable doubt that defendant testified under oath as alleged in the indictment, etc., and that his testimony was knowingly and willfully false, that then the defendant was guilty, does not violate the constitutional provision. *People v. Hitchcock*, 104 Cal. 485. For a case violating this section see *People v. Lang*, 104 Cal. 366.

In instructing a jury in a case for falsely registering contrary to provisions of the Purity of Elections Law [Stats. 1893, p. 24], the court fully instructed on the subject that the evidence of an accomplice should be viewed with distrust and also, in connection therewith said. "I instruct you, gentlemen, that G the man whom it is charged here S procured to falsely register, is an accomplice in this case," and again: "Now you are instructed further, as I have already stated, that G, is according to his own testimony, an accomplice in the crime here charged against S." *Held*, this was no violation of the constitutional prohibition, and that the instruction was more favorable to the defendant than he was entitled to. [*People v. Sansome*, 98 Cal. 235, distinguished.] *People v. Sternberg*, 111 Cal. 9. See also *People v. Smith*, 106 Cal. 80.

An instruction that if the jury finds by a preponderance of evidence that certain

enumerated facts existed they should find for the plaintiff, but that if the plaintiff had failed to prove any of said facts by a preponderance of evidence, their verdict should be for the defendant, does not violate the provision of the constitution which prohibits instructions upon matters of fact. *Ryan v. Los Angeles I. & C. S. Co.*, 112 Cal. 247.

A statement to the jury upon the trial of a criminal case of what the evidence tends to show is not an instruction as to matters of fact within the constitutional prohibition. *People v. Cummings*, 113 Cal. 89.

This section is referred to in a concurring opinion by Justice Temple in *People v. Paulsell*, 115 Cal. 13-14, with reference to instructions to the jury under section 2061 of the Penal Code, relating to a witness false in part of his testimony.

Case stated and illustrated by evidence where the instruction violates the provision against instructing upon the facts. *People v. Ellenwood*, 119 Cal. 170.

SECTION 20. The style of all process shall be, "The People of the State of California," and all prosecutions shall be conducted in their name and by their authority.

Const. 1849, Art. VI, Sec. 18.

An order of arrest signed by the judge in compliance with section 483 Code of Civil Procedure, is not a process to be issued in the name of the people, etc. *Dusy v. Helm*, 59 Cal. 188.

The district attorney in the prosecution of criminal cases, acts by the authority and in the name of the people of the state, though in other matters he may be largely under the control of and subordinate to the supervisors of the county. *County of Modoc v. Spencer & Raker*, 103 Cal. 498.

"Process" as intended by this section does not include the "commitment" under which prisoners are held in the state prison. The style of process here intended has uniformly been held insufficient as a commitment to prison. [*Matter of Ring*, 28 Cal. 248; *Ex parte Dobson*, 31 Cal. 498; *Ex parte Gibson*, 31 Cal. 620; *Matter of Brown*, 32 Cal. 49.] *Ex parte Ahern*, 103 Cal. 413.

Prosecutions of a criminal nature must be prosecuted in the name of the people of the state of California and not by a private person. *Morton v. Broderick*, 118 Cal. 483.

SECTION 21. The justices shall appoint a reporter of the decisions of the Supreme Court, who shall hold his office and be removable at their pleasure. He shall receive an annual salary not to exceed twenty-five hundred dollars, payable monthly.

There being no act in force providing for compensation of Supreme Court reporter between January 1 and July 1, 1880, it was competent for the legislature in 1883 to pass an act providing compensation for said officer during that period. *Smith v. Dunn*, 64 Cal. 164.



SECTION 22. No judge of a court of record shall practice law in any court of this state during his continuance in office.

SECTION 23. No one shall be eligible to the office of justice of the Supreme Court, or to the office of judge of a Superior Court, unless he shall have been admitted to practice before the Supreme Court of the State.

SECTION 24. No judge of a Superior Court nor of the Supreme Court shall, after the first day of July, one thousand eight hundred and eighty, be allowed to draw or receive any monthly salary unless he shall take and subscribe an affidavit before an officer entitled to administer oaths, that no cause in his court remains undecided that has been submitted for decision for the period of ninety days.

It is not intended by this section that a judge should forfeit his salary upon failure to decide all cases within ninety days, but it withholds the salary until cases submitted for ninety days have been decided. *Meyers v. Kenfield*, 62 Cal. 512.

## ARTICLE VII.

### PARDONING POWER.

SECTION 1. The governor shall have the power to grant reprieves, pardons, and commutations of sentence, after conviction, for all offenses except treason and cases of impeachment, upon such conditions, and with such restrictions and limitations as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason, the governor shall have power to suspend the execution of the sentence until the case shall be reported to the legislature at its next meeting, when the legislature shall either pardon, direct the exe-

cution of the sentence, or grant a further reprieve. The governor shall communicate to the legislature, at the beginning of every session, every case of reprieve or pardon granted, stating the name of the convict, the crime for which he was convicted, the sentence, its date, the date of the pardon or reprieve, and the reasons for granting the same. Neither the governor nor the legislature shall have power to grant pardons, or commutations of sentence, in any case where the convict has been twice convicted of felony, unless upon the written recommendation of a majority of the judges of the Supreme Court.

Const. 1849, Art. V, Sec. 13.

A person pardoned by the governor on condition that he forthwith leave the state and never return thereto, will not be discharged on *habeas corpus* when it appears that he has again been taken into custody after his release, and has remained in the state after reasonable time has elapsed for his departure from it. *Ex parte Marks*, 64 Cal. 30.

Penal Code, section 1590, giving to prisoners certain deductions from their term of sentence for good conduct is constitutional, and is not an infringement of the right of the governor to pardon. No order from the governor is necessary to entitle a prisoner to his discharge under said section. *Ex parte Wadleigh*, 82 Cal. 518.

## ARTICLE VIII.

## MILITIA.

SECTION 1. The legislature shall provide, by law, for organizing and disciplining the militia, in such manner as it may deem expedient, not incompatible with the constitution and laws of the United States. Officers of the militia shall be elected or appointed in such manner as the legislature shall from time to time direct, and shall be commissioned by the governor. The governor shall have power to call forth the militia to execute the laws of the state, to suppress insurrections, and repel invasions.

Const. 1849, Art. VIII, Secs. 1, 2, 3.

SECTION 2. All military organizations provided for by this constitution, or any law of this state, and receiving state support, shall, while under arms either for ceremony or duty, carry no device, banner or flag of any state or nation, except that of the United States or the state of California.

## ARTICLE IX.

## EDUCATION.

SECTION 1. A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement.

Const. 1849, Art. IX, Sec. 2.

Education of the youth is properly included within functions of a municipal government, and it is for the legislature to determine the extent to which it will confer upon such corporation any power to aid it in the discharge of the obligation which the constitution has

imposed upon the legislature. In each of the free-holders' charters that have been approved by the legislature an educational department has been established. School houses are essential aids in promotion of education, and their creation falls as completely within municipal government as does erection of hospitals or buildings for fire engines, and when erected are as fully municipal buildings. [Distinguishing *Kennedy v. Miller*, 97 Cal. 429.] *Wetmore v. City of Oakland*, 99 Cal. 146.

The section is referred to in *Chico High School Board v. Supervisors*, 118 Cal. 120, in deciding that where a city of the fifth class is included with other territory in a school district, the school taxes are to be levied by the city authorities and not by the supervisors.

SECTION 2. A superintendent of public instruction shall, at each gubernatorial election after the adoption of this constitution, be elected by the qualified electors of the state. He shall receive a salary equal to that of the secretary of state, and shall enter upon the duties of his office on the first Monday after the first day of January next succeeding his election.

Const. 1849, Art IX, Sec. 1.

An amendment to section 1552, Political Code, March, 1889, provides that each superintendent of public instruction shall receive his actual and necessary traveling expenses, to be paid out of the county general fund, not to exceed ten dollars per district per annum. *Held*, not to be an unlawful increase of the salary of the office. *Kirkwood v. Soto*, 87 Cal. 394.

Section referred to in *Barton v. Kalloch*, 56 Cal. 101.

SECTION 3. A superintendent of schools for each county shall be elected by the qualified electors thereof at each gubernatorial election; provided, that the legislature may authorize two or more counties to unite and elect one superintendent for the counties so uniting.

Referred to in *Barton v. Kalloch*, 56 Cal. 102.

The term of office of assessor was made four years by section 4109 of the Political Code as adopted in 1872, and by section 3 of article IX constitution, the superintendent of schools is to be elected at each gubernatorial election [referring to officers in San Francisco]. *Kahn v. Sutro*, 114 Cal. 318; *People v. Babcock*, 114 Cal. 559.

SECTION 4. The proceeds of all lands that have been or may be granted by the United States to this state for the support of common schools which may be, or may have been, sold or disposed of, and the five hundred thousand acres of land granted to the new states under an act of congress distributing the proceeds of the public lands among the several states of the Union, approved A. D. one thousand eight hundred and forty-one, and all estates of deceased persons who may have died without leaving a will or heir, and also such per cent. as may be granted, or may have been granted, by congress on the sale of lands in this state, shall be and remain a perpetual fund, the interest of which, together with all the rents of the unsold lands, and such other means as the legislature may provide, shall be inviolably appropriated to the support of common schools throughout the state.

*Const. 1849, Art. IX, Sec. 2.*

School moneys properly are retained in county treasury, and not subject to call of city treasury. *Kennedy v. Miller*, 97 Cal. 429.

The constitution does not prohibit aliens who have never been residents of this state from being heirs. [See Secs. 671, 672, Civil Code, and Sec. 17, Art. I.] *State v. Smith*, 70 Cal. 153.

The property of a deceased person does not vest in the state if he leaves heirs. *Lyons v. State*, 67 Cal. 380.

This section is referred to in *Lundy v. Delmas*, 104 Cal. 658.

SECTION 5. The legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year after the first year in which a school has been established.

Const. 1849, Art. IX, Sec. 3.

The purpose is to maintain school within the district.

An incorporated town being formed of part of a school district, and school being maintained in the town by the school trustees, but no school being maintained in that part of district not included in the town, does not entitle the trustees to draw county money apportioned to the district. *Bay View S. District v. Linscott*, 99 Cal. 25.

School moneys are properly retained in county treasury and not subject to deposit in city treasury. *Kennedy v. Miller*, 97 Cal. 429.

The general law as contained in the Political Code controls the provisions of a special

charter of San Francisco in relation to public schools. *Kennedy v. Board of Education*, 82 Cal. 483.

Section referred to in construing Traylor act [Stats. 1880, p. 105] in *Earle v. Board of Education*, 55 Cal. 489. This section is not self executing. *People v. Board of Education*, 55 Cal. 331, 334.

The amendment of 1893 of section 1645 of Political Code, which provides that in cities having a board of education the state and county school moneys should be deposited with the city treasurer, was special legislation and unconstitutional. The term "system" itself imports a unity of purpose as well as an entirety of operation, and the direction of the legislature to provide a system of common schools means *one* system. [*Kennedy v. Miller*, 97 Cal. 429.] *Bruch v. Colombet*, 104 Cal. 350.

SECTION 6. The public school system shall include primary and grammar schools, and such high schools, evening schools, normal schools and technical schools as may be established by the legislature, or by municipal or district authority; but the entire revenue derived from the state school fund, and the state school tax, shall be applied exclusively to the support of primary and grammar schools.

*[An amendment to this section was voted on at the general election November 8, 1898.]*

As to school moneys, see *Kennedy v. Miller*, 97 Cal. 429. The section defines what are *public schools* of the state [*Abeel v. Clark*, 84

Cal. 226, 229], and is not self executing. *People v. Board of Education*, 55 Cal. 331, 334.

Under the amendment of 1891 to section 795 of municipal act of 1883, where a city of the fifth class is included with other territory in a school district, the estimate for taxes required by section 1670 of the Political Code must be made to the city authorities and not to the supervisors. Such legislation is not unconstitutional. *Chico H. S. Board v. Supervisors*, 118 Cal. 119.

The provisions of the Political Code and the county government act authorizing county assessors to retain as compensation for their services in collecting, fifteen per cent of all poll taxes collected by them, are not, as to state poll taxes, unconstitutional.

The word "exclusively," as used in this section, is directed to the point that the state school funds must only be applied to the support of primary and grammar schools to the exclusion of other classes of schools. *County of San Luis Obispo v. Felts*, 104 Cal. 63.

Although the kindergarten system, when adopted, is to be regarded as part of the public primary schools [Secs. 1617, 1662, 1771, Pol. Code] of the school district, yet it is not essential that the teacher of the kindergarten classes must have a certificate authorizing her to teach the whole primary school course. A warrant drawn upon the grammar and primary school fund in favor of such kindergarten teacher must be paid out of that fund. The city of San Jose, as well as all other cities, is



subject to this legislation, and the legislation is not unconstitutional. *Sinnot v. Colombet*, 107 Cal. 189.

SECTION 7. The governor, the superintendent of public instruction, the president of the University of California, and the professor of pedagogy therein, and the principals of the state normal schools, shall constitute the state board of education, and shall compile, or cause to be compiled, and adopt, a uniform series of text books for use in the common schools throughout the state. The state board may cause such text books, when adopted, to be printed and published by the superintendent of state printing, at the state printing office, and when so printed and published, to be distributed and sold at the cost price of printing, publishing and distributing the same. The text books so adopted shall continue in use not less than four years; and said state board shall perform such other duties as may be prescribed by law. The legislature shall provide for a board of education in each county in the state. The county superintendents and the county boards of education shall have control of the examination of teachers, and the granting of teachers' certificates, within their respective jurisdictions. [Amendment ratified at election Nov. 6, 1894.]

[Amendment 1885.]

SECTION 7. The governor, superintendent of public instruction and the principals of the state normal schools, shall constitute the state board of education, and shall compile, or cause to be compiled, and adopt a uniform series of text books for use in the common schools throughout the state. The state board may cause such text books, when adopted, to be printed and published by the superintendent of state printing, at the state printing office; and when so printed and published, to be distributed and sold at the cost price of printing, publishing and distributing the same. The text books, so adopted, shall continue in use not less

than four years; and said state board shall perform such other duties as may be prescribed by law. The legislature shall provide for a board of education in each county in the state. The county superintendents and the county boards of education shall have control of the examination of teachers and the granting of teachers' certificates within their respective jurisdictions. [Ratification declared Feb. 12, 1885.]

[ORIGINAL SECTION.]

SECTION 7. The local boards of education, and the boards of supervisors, and the county superintendents of the several counties which may not have county boards of education, shall adopt a series of text books for the use of the common schools within their respective jurisdictions; the text books so adopted shall continue in use for not less than four years; they shall also have control of the examination of teachers and the granting of teachers certificates within their several jurisdictions.

This section is self executing, and operated as a repeal of the act of December 13, 1875, [Stat. p. 1] which provided that certain text books then in use should be continued until otherwise provided by statute. A constitutional provision may be self executing as to a certain state of facts and not as to another state of facts. *People v. Board of Education*, 55 Cal. 331.

Although the kindergarten system, when adopted, is to be regarded as part of the primary schools of the school district [Secs. 1617, 1662, 1771, Pol. Code,] yet it is not essential that the teacher of the kindergarten classes should have a certificate authorizing her to teach the *whole* primary school course. A

warrant drawn against the grammar and primary school fund in favor of such kindergarten teacher must be paid out of that fund. The city of San Jose, as well as all other cities, is subject to this legislation, and the legislation is not unconstitutional. *Sinnot v. Colombet*, 107 Cal. 192.

A graduate from a state normal school of this state, under section 1503, Political Code, [1893] is entitled to a grammar grade school certificate from any city, city and county, or county board of education in the state, and any rule of any such board requiring one year's experience in teaching, before such certificate shall issue, is contrary to the general law of the state and void. *Mitchell v. Winnek*, 117 Cal. 522.

SECTION 8. No public money shall ever be appropriated for the support of any sectarian or denominational school, or any school not under the exclusive control of the officers of the public schools; nor shall any sectarian or denominational doctrine be taught, or instruction thereon be permitted, directly or indirectly, in any of the common schools of this state.

Where a minor has been convicted of misdemeanor in the police judges' court, San Francisco, and the court has suspended judgment and ordered the minor to be confined under the care of the Boys' and Girls' Aid Society—a non-sectarian charitable institution for the reformation of criminal minors—and has ordered a proper amount to be paid from the treasury of the city and county for the *mainenance* of such minor while in such custody,

mandamus will lie to compel such payment. The act of March 15, 1883, [Sec. 1388, Penal Code] under which such proceedings are had, is constitutional, and it is not necessary that the order of the judge directing the payment should be approved by the supervisors. *Boys' and Girls' Aid Society v. Reis*, 71 Cal. 627.

Section referred to in *Kennedy v. Miller*, 97 Cal. 431.

SECTION 9. The University of California shall constitute a public trust, and its organization and government shall be perpetually continued in the form and character prescribed by the organic act creating the same, passed March twenty-third, eighteen hundred and sixty-eight (and the several acts amendatory thereof), subject only to such legislative control as may be necessary to insure compliance with the terms of its endowments, and the proper investment and security of its funds. It shall be entirely independent of all political or sectarian influence, and kept free therefrom in the appointment of its regents and in the administration of its affairs; provided, that all the moneys derived from the sale of the public lands donated to this state by act of congress, approved July second, eighteen hundred and sixty-two (and the several acts amendatory thereof), shall be invested as provided by said acts of congress, and the interest of said moneys shall be inviolably appropriated to the endowment, support and maintenance of at least one college of agriculture, where the leading objects shall be (without excluding other scientific and classical studies, and including military tactics) to teach such branches of learning as are related to scientific and practical agriculture and the mechanic arts, in accordance with the requirements and conditions of said acts of congress; and the legislature shall provide that if, through neglect, misappropriation, or any other contingency any portion of

the funds so set apart shall be diminished or lost the state shall replace such portion so lost or misappropriated so that the principal thereof shall remain forever undiminished. No person shall be debarred admission to any of the collegiate departments of the university on account of sex.

The organic act of the university [Stats. 1867, p. 248] made provision that professional and other colleges might be added to and connected with the university. The act of March 26, 1878 [Stats. p. 533] creating Hastings College of Law, made provision for its affiliation with the university, and it was decided in *Foltz v. Hoge*, 54 Cal. 28, that such affiliation had been effected, and that the college had become an integral part of the university. By the constitution it is declared that the university shall be continued in the character and form prescribed in the acts then in force, subject to legislative control for specified purposes only. It was not competent for the legislature by act of March 3, 1883, [Stats. p. 54] or the act of March 18, 1885, [Stats. p. 202] or by any other act to change the form of government of the university, or of any college thereof then existing by assuming to transfer the control of the college to the regents of the university, or to make another transfer by creating a board of trustees for the college. Such changes are prohibited by the constitution as to the university, and the college is part of the university. *People v. Kewen*, 69 Cal. 215.

All money in the state treasury subject to the use of the university may be drawn upon *the order* of the board of regents, endorsed by

the governor, without an appropriation or the warrant of the comptroller. *University v. January*, 66 Cal. 507.

The section is self-executing, and requires no legislation. *People v. Board of Education*, 55 Cal. 334.

Under the provisions of the act organizing the University of California, and of this section of the constitution, the regents are not public officers. Section 343 of Political Code designating the regents as civil executive officers is repealed by this section of the constitution. *Lundy v. Delmas*, 104 Cal. 659.

## ARTICLE X.

### STATE INSTITUTIONS AND PUBLIC BUILDINGS.

SECTION 1. There shall be a state board of prison directors, to consist of five persons, to be appointed by the governor, with the advice and consent of the senate, who shall hold office for ten years, except that the first appointed shall, in such manner as the legislature may direct, be so classified that the term of one person so appointed shall expire at the end of each two years during the first ten years, and vacancies occurring shall be filled in like manner. The appointee to a vacancy, occurring before the expiration of a term, shall hold office only for the unexpired term of his predecessor. The governor shall have the power to remove either of the directors for misconduct, incompetency, or neglect of duty, after an opportunity to be heard upon written charges.

The attorney general having filed with the governor specific charges of misconduct and neglect of duty on the part of the state board of prison directors, *Held*, the governor had

power to investigate the charges, he having commenced such investigation by a course of procedure similar to that provided for trials before the courts. *Chapman v. Stoneman*, 63 Cal. 490.

Under the general powers of the legislature essential to the promotion, regulation and preservation of the morals, health, prosperity and general well-being of the people of the state, it was competent to enact section 172 of Penal Code, making it a criminal offense to sell or give away spirituous, etc., liquors, within one mile of any state prison or asylum. Such power existed under the former constitution; and, (per Thornton, J.) the like power exists under the present constitution. *Ex parte McClain*, 61 Cal. 436.

SECTION 2. The board of directors shall have the charge and superintendence of the state prisons, and shall possess such powers, and perform such duties, in respect to other penal and reformatory institutions of the state, as the legislature may prescribe.

In strictness all public highways belong to the state. The easement is held by the state as the representative of the people. The legislature has conferred power of vacating or closing highways only upon boards of supervisors; and the state prison directors have no authority to close or obstruct with gates a public road which crosses state prison grounds. *People v. County of Marin*, 103 Cal. 225.

SECTION 3. The board shall appoint the warden and clerk, and determine the other necessary officers of the prisons. The board shall have power to remove the wardens and clerks for misconduct, incompetency, or neglect of duty. All other officers and employes of the prisons shall be appointed by the warden thereof, and be removed at his pleasure.

SECTION 4. The members of the board shall receive no compensation other than reasonable traveling and other expenses incurred while engaged in the performance of official duties, to be audited as the legislature may direct.

The act of April 15, 1880 [Stats. p. 243], to define, regulate and govern the state prison, and the amendment thereto of March 14, 1881 [Stats. p. 81], in so far as they attempt to grant compensation to the members of the board of directors other than reasonable traveling and other expenses, are unconstitutional. *People v. Chapman*, 61 Cal. 262.

SECTION 5. The legislature shall pass such laws as may be necessary to further define and regulate the powers and duties of the board, wardens and clerks, and to carry into effect the provisions of this article.

SECTION 6. After the first day of January, eighteen hundred and eighty-two, the labor of convicts shall not be let out by contract to any person, copartnership, company or corporation, and the legislature shall, by law, provide for the working of convicts for the benefit of the state.



## ARTICLE XI.

## CITIES, COUNTIES AND TOWNS.

SECTION 1. The several counties as they now exist, are hereby recognized as legal subdivisions of this state.

Sections 1 to 13 are referred to as sustaining the proposition that under the municipal corporation act the recorder of a city may have a dual jurisdiction and functions, as justice of the peace and recorder. *Prince v. City of Fresno*, 88 Cal. 407, 412.

Article III of the constitution relates to the state government, and has no application to the local governments provided for in article XI.

The power of delegation conferred by statutes upon local boards is confined to duties ministerial in character. *Holley v. County of Orange*, 106 Cal. 424.

San Francisco city and county is in a general sense a municipality, as distinguished from a county, but in some respects partakes of both a municipal and a county government. Geographically it is one of the legal subdivisions of the state and is recognized as a county in section 1 of article XI, constitution. *Kahn v. Sutro*, 114 Cal. 318. See notes under section 11 of this article, and see *People v. Babcock*, 114 Cal. 559.

SECTION 2. No county seat shall be removed unless two-thirds of the qualified electors of the county, voting on the proposition at a general election, shall vote in favor of such removal. A proposition of removal shall not be submitted in the same county more than once in four years.

SECTION 3. The legislature, by general and uniform laws, may provide for the formation of new counties; provided, however, that no new county shall be established which shall reduce any county to a population of less than eight thousand; nor shall a new county be formed containing a less population than five thousand; nor shall any line thereof pass within five miles of the county seat of any county proposed to be divided. Every county which shall be enlarged or created from territory taken from any other county or counties, shall be liable for a just proportion of the existing debts and liabilities of the county or counties from which such territory shall be taken. [Amendment ratified at election Nov. 6, 1894.]

[ORIGINAL SECTION.]

SECTION 3. No new county shall be established which shall reduce any county to a population of less than eight thousand; nor shall a new county be formed containing a less population than five thousand; nor shall any line thereof pass within five miles of the county seat of any county proposed to be divided. Every county which shall be enlarged or created from territory taken from any other county or counties, shall be liable for a just proportion of the existing debts and liabilities of the county or counties from which such territory shall be taken.

On division of county and creating new county, the latter is not chargeable with money expended in its territory by the original county between the date of the act and the organization of the new county. *Los Angeles County v. Orange County*, 97 Cal. 329.

The courts are not authorized to determine what is the just proportion of debts or liabilities *for which the new or the old county*

should be liable. The power to apportion such debts rests entirely with the legislature. *Tulare County v. Kings County*, 117 Cal. 196.

In this state the legislature has the power to change the boundaries of counties, to consolidate two or more counties into one, and to create a new county out of the territory of one or more previously existing counties, subject only to the limitations expressed in this section of the constitution. *Orange County v. Los Angeles County*, 114 Cal. 392.

SECTION 4. The legislature shall establish a system of county governments which shall be uniform throughout the state, and by general laws shall provide for township organization, under which any county may organize whenever a majority of the qualified electors of such county, voting at a general election, shall so determine; and whenever a county shall adopt township organization, the assessment and collection of the revenue shall be made, and the business of such county and the local affairs of the several townships therein, shall be managed and transacted in the manner prescribed by such general laws.

Const. 1849, Art. XI, Sec. 4.

The system adopted by the county government act of 1883, as amended in 1889 [Stats. 1889, p. 232, and 1891, p. 331] construed, and *Held*, the classification of counties for purpose of fixing salaries of officers is not in contravention of this section. The section means that the "system" shall be uniform, so that its several parts shall be applicable *to each county*—uniformly applicable to all *the counties* in the state. The legislature is

forbidden to pass any local or special law regulating county or township business, [Art. IV, Sec. 25, Par. 9] or perscribing the powers and duties of officers in counties. [Art. IV, Sec. 25, Par. 28.] *Welch v. Bramlett*, 98 Cal. 219.

An act of the legislature amending the county government act [Stats. 1887 p. 207] authorizing supervisors in counties in certain classes to appoint deputies of county clerk and pay them from the county treasury delegated to the supervisors powers which could only be exercised by the legislature. *Dougherty v. Austin*, 94 Cal. 601, 626. *McFarland and Paterson, JJ.*, dissenting.

The objection was made to the act of April 27, 1880, [Stats. p. 527] known as the county government act, that it was not a general law nor uniform throughout the state. Several other objections were also urged, but the court decided it unconstitutional, without expressly distinguishing the objections. *Leonard v. January*, 56 Cal. 1.

There is a distinction between the system of county government embracing school, road and supervisorial districts, and the township organization. Under this latter the county may become organized whenever a majority of qualified electors determine at a general elections. A general law is also required for the government of such township organizations. [*Ex parte Wall*, 48 Cal. 318.] *Longan v. County of Solano*, 65 Cal. 122.

*A reclamation district is a public corpora-*

tion for municipal purposes, and special acts prior to this constitution, creating such districts are valid. *Swamp L. Dist. No. 150 v. Silver*, 98 Cal. 51.

For comments upon corporations for public purposes, other than strictly municipal or county, see *In re Madera Ir. Dis.*, 92 Cal. 297, 319.

The duty of the legislature is simply to establish a system of county governments which shall be uniform throughout the state, and the provision of subdivision 15, of section 189, of the act as amended in 1889, [Stats. p. 283] directing that in counties of a certain class, license taxes shall be paid into the city treasury of the incorporated city or town where the same are collected, is not germane to the subject of the act, and is special and local legislation. License taxes are for the use of the county, and should be deposited with the county treasurer. [See 3363 Political Code, Const. Art. XI, Sec. 16.] *County of San Luis Obispo v. Graves*, 84 Cal. 71.

This section is referred to in *Rauer v. Williams*, 118 Cal. 404.

This section was violated by section 195 of the county government act of 1891 [Stats. 1891 p. 397] which provided that in counties of the thirty-third class the county clerk should, besides other fees, collect one dollar for each additional one thousand dollars value (over \$5000.00) of the estate, in probate cases. *Bloss v. Lewis*, 109 Cal. 496.

The provisions of section 173 of the county

government act of 1893 [Stats. p. 415, 416], empowering certain county officers in counties of the eleventh class to appoint a specified number of deputies and fixing their salaries, which were to be paid out of the county treasury, are not unconstitutional. *Tulare County v. May*, 118 Cal. 305.

The legislature has never provided for the system of township organization permitted by this section. *Kahn v. Sutro*, 114 Cal. 318. And see *People v. Babcock*, 114 Cal. 559.

**SECTION 5.** The legislature, by general and uniform laws, shall provide for the election or appointment, in the several counties, of boards of supervisors, sheriffs, county clerks, district attorneys, and such other county, township and municipal officers as public convenience may require and shall prescribe their duties, and fix their terms of office. It shall regulate the compensation of all such officers, in proportion to duties, and for this purpose may classify the counties by population; and it shall provide for the strict accountability of county and township officers for all fees which may be collected by them, and for all public and municipal moneys which may be paid to them, or officially come into their possession.

Const. 1849, Art. XI, Sec. 5.

The county government act [Stats. 1891, pp. 304, 307], does not authorize supervisors to employ counsel to assist district attorney in prosecuting criminal cases, nor is such authority within the inherent powers of supervisors. The district attorney, in the prosecution of criminal cases, acts by the authority and in the name of the people of the state, though in other matters he may be largely subordinate

to and under the control of the supervisors. County of Modoc *v. Spencer & Raker*, 103 Cal. 498.

Supervisors cannot create offices. The legislature cannot divest itself of this power and confer it upon supervisors. In this respect this section is mandatory. *Eldorado Co. v. Meiss*, 100 Cal. 268. Affirmed in *Los Angeles County v. Lopez*, 104 Cal. 257. Nor contract with a person to collect delinquent taxes. *House v. Los Angeles County*, 104 Cal. 79. That it is mandatory. *Welch v. Bramlett*, 98 Cal. 219.

The legislature had power to pass the act of March 31, 1891 [Stats. p. 430], to establish law libraries. And the supervisors having elected to come in under that act, cannot afterwards evade it by repealing the enacting clause of their ordinance. [Citing, as to power of the legislature, *People v. McFadden*, 81 Cal. 489.] *Board of Trustees v. Supervisors*, 99 Cal. 571.

It was unnecessary to pass upon the constitutionality of that part of the act of March 11, 1891 [Stats. p. 101], whereby the commissioners declared Glen county to belong to the 41st class. The county contained a population between 6500 and 6600, and was a county of the 41st class under general law existing when it was created, notwithstanding the act creating it provided that until otherwise provided by law, it should belong to the 37th class. *Saunders v. Sehorn*, 98 Cal. 227.

*The constitution requires the legislature and not the supervisors to regulate the compensa-*

tion of officers in proportion to duties, and this power cannot be delegated. [Dougherty v. Austin, 94 Cal. 602.] Welsh v. Bramlett, 98 Cal. 219. And see also Saunders v. Sehorn, *supra*.

What compensation is commensurate with duties of an office is a question of fact to be determined by the legislature. Green v. Fresno Co., 95 Cal. 329.

Subdivision 14 of section 183 of the county government act [Stats. 1891 p. 377] authorizing the supervisors to fix the salaries of constables, to be paid monthly, etc., is unconstitutional. The compensation of such officers must be regulated by the legislature in proportion to duties, and this power cannot be delegated to the supervisors. People v. Johnson, 95 Cal. 471.

In Dougherty v. Austin, 94 Cal. 601, it was held that the amendment [Stats. 1887, p. 207], authorizing supervisors to appoint deputies when they deemed it necessary or expedient and to pay such deputies out of the county funds, enabled the supervisors to regulate the compensation of the officer and was void, although the act was passed before, and acted upon by supervisors after election of the officer. Such power cannot be delegated by legislature, and this section is mandatory.

Section cited on construction of statute in Donlon v. Jewett, 88 Cal. 531.

That the legislature shall classify by population. People v. McFadden, 81 Cal. 489, 500.

*The requirement of subdivision 15 of section*



189 of county government act as amended in 1889 [Stats. p. 283], that moneys collected as license taxes upon business conducted in any incorporated city or town shall be paid into the city treasury, etc., is contrary to the general laws of the state [Pol. Code, pt. 3, tit. 7, c. 15], and is not germane to any part of said county government act, which purports to provide for the organization, classification and powers of counties, and the powers, duties and compensation of county officers. *County of San Luis Obispo v. Graves*, 84 Cal. 71.

There is no mandate in this section directing the legislature to provide for the payment of salaries to county officers, nor does it prohibit their compensation by fees. The fee bill of 1870 [Stats. p. 438] became operative in San Luis Obispo county when the three offices of clerk, auditor and recorder became vested in different persons in 1881. *San Luis Obispo Co. v. Darke*, 76 Cal. 92. See also *Whiting v. Haggard*, 60 Cal. 513.

This section is part of the system of restriction upon the legislature against passing special laws. *Thomason v. Ashworth*, 73 Cal. 73, 77.

Under county government act of March 14, 1883 [Stats. p. 299], the supervisors had authority to create the office of license tax collector, and appoint a suitable person to discharge the duties of said office. *People v. Ferguson*, 65 Cal. 288, *McKee, J.*, dissenting.

The legislature is entitled, as was done in the county government act of 1883 [Stats. p.

299], to classify the counties by population as a means of regulating the compensation of officers in proportion to duties. *Longan v. County of Solano*, 65 Cal. 122.

Under the act of 1878 [Stats. p. 881] with reference to the police force in the city of San Francisco (known as the "McCoppin police bill") the police commissioners and chief of police were not elective officers, and their mode of appointment by the district judges was not in violation of the then existing constitution under decisions of the former Supreme Court. *Staudé v. Election Commissioners*, 61 Cal. 313.

The Police Justice's Court provided for under the charter of San Jose of 1874, remained unaffected by the general law of 1880 [Stats. p. 63] relative to courts of justice. It was a charter, not a legislative court. *In re Carrillo*, 66 Cal. 4, citing *Desmond v. Dunn*, 55 Cal. 242; and *Wood v. Election Commissioners*, 58 Cal. 561.

It seems that the legislature has power to provide that all county officers may be appointed instead of being elected. *McKinstry, J.*, concurring in the judgment, dissents from this view, but was of opinion the section could be construed as authorizing a system by which some county and township officers should be elected and others be appointed by those elected. *Barton v. Kalloch*, 56 Cal. 95.

The constitution [Sec. 20, Art. XX] does not attempt to fix the terms of municipal and township or county officers. These are left to a.

be fixed by the legislature. A county clerk of San Francisco elected in September, 1879, was entitled to take his office in December, 1879, in accordance with the provisions of the "Consolidation Act" of that city and county. Said act was not repealed *propria vigore* by the constitution. [Sec. 1, schedule.] The fixing of terms of municipal, county and township officers is left for future legislation by general and uniform laws. *In re Stuart*, 53 Cal. 746.

Cities and counties incorporated previous to this constitution are to be controlled by general laws, but their charters are not repealed but remain in force in each case until otherwise organized under general laws, or frame a charter as authorized by this constitution. The same rule applies to cities and to city and county governments. [Sec. 6, Art. XI, Const.] The general laws contemplated are laws providing for all corporations for municipal purposes, and not for some only. The McClure charter [Stats. 1880, p. 414] relates only to consolidated city and county governments, and is unconstitutional. The classification provided for is one that should embrace all cities and towns. *Desmond v. Dunn*, 55 Cal. 242.

It is not fatal to an act creating a new county that it does not provide for a division of the county into five supervisorial districts, but allows five supervisors to be elected at large, who have power under the general law

to district the county. *People v. County of Glenn*, 100 Cal. 424.

Boards of supervisors are the creatures of the statute. The constitution prescribes that the legislature shall provide for their election or appointment, and prescribe their duties and fix their compensation. Their authority in any case must be sought in the statutes. *County of Modoc v. Spencer*, 103 Cal. 499.

The provisions of section 162 of county government act of 1893 [Stats. p. 346], to the effect that when the population of an existing county shall be reduced by reason of the creation of a new county from the territory thereof, below the class and rank first assumed under that act, it should be the duty of the supervisors of such county to designate, by order, the class to which said county has been reduced, is not an unconstitutional delegation of power. The action required of the board of supervisors involves only the finding of a fact. *Kumler v. Board of Supervisors*, 103 Cal. 395.

*Welsh v. Bramlet*, 98 Cal. 219, in effect holding that the provisions of section 21 of the county government act of 1891, allowing deputies to certain county officers, such deputies to be paid from the county funds, is unconstitutional, is approved in *Walser v. Austin*, 104 Cal. 129.

The election of one ineligible member on a board of supervisors does not render the entire board disqualified, illustrative that one ineligible member on a board of freeholders for the

framing of a city charter does not disqualify the entire board. *People v. Hecht*, 105 Cal. 626.

That supervisors cannot create office of tax collector, see *County of Los Angeles v. Lopez*, 104 Cal. 257, nor contract with a person to collect delinquent taxes. *House v. Los Angeles County*, 104 Cal. 79.

Section 726 of the Code of Civil Procedure, authorizing the court to appoint a commissioner to sell property under a decree of foreclosure, does not violate section 5, article XI, constitution. *McDermot v. Barton*, 106 Cal. 194.

Classification of counties is authorized solely for the purpose of fixing the compensation of officers. *Bloss v. Lewis*, 109 Cal. 497.

As to witness fees in counties of twenty-eighth class, see similar decision in *Turner v. County of Siskiyou*, 109 Cal. 334.

The provisions of sections 162 and 216 of the county government act of 1895 [Stats. pp. 1-11], requiring assessors in counties of the second class to turn into the county treasury the percentages allowed for collecting poll taxes, personal property taxes, and the sums allowed for returning names of persons subject to military duty, are not "special" legislation, but are a proper regulation of compensation, being applicable alike to all counties of a certain class, which class has been created by a general law. *Summerland v. Bicknell*, 111 Cal. 568.

*The constitution permits the classification*

of counties only for the purpose of fixing the compensation of officers, and a primary election law based upon such classification is unconstitutional. [Primary Election law 1893, Stats. p. 207.] *Marsh v. Supervisors Los Angeles Co.*, 111 Cal. 270. See also *Gett v. Supervisors, Sacramento*, 111 Cal. 367.

The county government act of 1893, prescribing four years as the term for county offices, does not affect the "municipal" offices of the city and county of San Francisco. Said consolidated government has some offices which are peculiarly municipal as distinguished from county. *Kahn v. Sutro*, 114 Cal. 318. And see *People v. Babcock*, 114 Cal. 559.

The case of *Eldorado County v. Meiss* is distinguished in *Lewis v. Colgan*, 115 Cal. 531.

In the latter case it was held that the legislature might make an appropriation for the compensation of an expert employed by the state board of examiners, either before or after the performance of services; that such expert was an employé and not an officer, and that his employment was incidental, and fairly implied from the express powers given the board by statute. See notes under section 32, article IV. And see *Dwyer v. Parker*, 115 Cal. 546, referring to article I, section 22, and that the constitution is mandatory as to the classification of counties for the purpose of fixing compensation of officers.

*That part of the fee bill of 1895 [Stats.*

p. 268 Palm Ed.], giving district attorneys supervisory control over the fees of justices and constables is unconstitutional in destroying uniformity of operation [Art. I. Sec. 11, Const.] and as improperly regulating the compensation of officers. *Dwyer v. Parker*, 115 Cal. 546.

This section and also section 7 of this article are referred to in *Currey v. Miller*, 113 Cal. 645, in connection with the fee bill of 1895, where said act was held applicable to San Francisco.

This section referred to in *Cullen v. Glendora Water Co.*, 113 Cal. 510-516.

Also referred to in *Rauer v. Williams*, 118 Cal. 404.

The constitution requires that legislation for specified purposes shall be directed to cities and to counties by classes, and that population shall be the basis for the classification. In counties, the compensation of officers shall be fixed only on such classification, while as to cities all legislation affecting incorporation, organization, and classification must be based upon a like system. [*Rauer v. Williams*, 118 Cal. 401.] Concurring opinion of Justice Henshaw *In re Mitchell*, 120 Cal. 391.

SECTION 6. Corporations for municipal purposes shall not be created by special laws; but the legislature, by general laws, shall provide for the incorporation, organization, and classification, in *proportion* to population, of cities and towns, which *laws may* be altered, amended or repealed. Cities and towns heretofore organized or incorporated

may become organized under such general laws whenever a majority of the electors voting at a general election shall so determine, and shall organize in conformity therewith; and cities and towns heretofore or hereafter organized, and all charters thereof framed or adopted by authority of this constitution, except in municipal affairs, shall be subject to and controlled by general laws. [*Ratified at election held November 3, 1896.*]

[ORIGINAL SECTION.]

SECTION 6. Corporations for municipal purposes shall not be created by special laws; but the legislature, by general laws, shall provide for the incorporation, organization, and classification, in proportion to population, of cities and towns, which laws may be altered, amended, or repealed. Cities and towns heretofore organized or incorporated may become organized under such general laws whenever a majority of the electors voting at a general election shall so determine, and shall organize in conformity therewith; and cities or towns heretofore or hereafter organized, and all charters thereof framed or adopted by authority of this constitution, shall be subject to and controlled by general laws.

The act of March 19, 1889 [Stats. p. 356] to provide for changing the boundaries of cities and municipal corporations and to exclude certain territory therefrom is a general law and is not unconstitutional. The exclusion of Coronado from the city of San Diego in the mode provided by said act is not an amendment of the San Diego charter such as is prohibited within two years by section 8, article XI, constitution. [People v. City of Oakland, 92 Cal. 611 distinguished.] People v. City of Coronado, 100 Cal. 571.

The act of the legislature of March 16, 1889



[Stats. p. 302] to re-incorporate the city of San Diego, which applies to that city alone, and is designed to omit from said city a large amount of territory theretofore included in the city is unconstitutional as local and special legislation. [*People v. Common Council*, 85 Cal. 369, approved.] *Fisher v. Police Court*, 86 Cal. 158.

A regular annual election for city officers is a general election in the sense of this section. The majority required, however, is a majority of all the electors voting at such election, and where 1287 votes are polled of which 533 are in favor of re-organization and 511 are opposed thereto, there is not a majority of all the electors voting at such election in favor of such re-organization although there is a majority of those voting on that particular question. *People v. Town of Berkeley*, 102 Cal. 298. Compare *Howland v. Board of Supervisors*, 109 Cal. 153.

The McClure charter [Stats. 1880, p. 414] for San Francisco was unconstitutional because not a general law, and it can have no validity until it shall have been adopted by a vote of the electors at a general election. The charters of cities and counties already in force are not absolutely repealed by this constitution; they remain, subject to be controlled by general laws, until superseded by charters framed in the manner provided for by the constitution. [*Dougherty v. Dunn*, 3 Pac. Rep. 412.] *Desmond v. Dunn*, 55 Cal. 242.

*Consolidated city and county governments*

are also subject to control of general laws, and an order of supervisors of San Francisco in conflict with the general laws of the state [Pol. Code, Secs. 3012, 3025, 3084, and Pen. Code, 377] in relation to certificates of death and burial permits is void. *Ex parte* Keeney, 84 Cal. 304.

The legislature has power to pass a general law which will affect the charter of the city and county of San Francisco, without the consent of such city and county. The acts of March 6, 1883, [Stats. p. 32] and March 18, 1885, [Stats. p. 147] to provide for the improvement of streets, lanes, etc., so far as in conflict with special laws relating to the subject in said city and county, repealed the prior acts. The framers of the constitution were careful to restrict the legislature from passing special laws, and where, as by article IV, section 25; article XI, sections 4, 5, 11, 12, 14; article XII, sections 1, 5, 11, legislative powers are conferred on counties, cities, towns or townships, by the constitution, such powers are still made subject to control by general laws. *Thomason v. Ashworth*, 73 Cal. 73, McKinstry, J., dissenting. See also *Oakland Pav. Co. v. Tompkins*, 72 Cal. 5, and concurring and dissenting opinions in *Thomason v. Ruggles*, 69 Cal. 465, and *Oakland Pav. Co. v. Hilton*, 69 Cal. 479. In the latter case in mandamus to compel the city marshal of Oakland to enter into a contract for street work prior to the making of assessment and payment into the treasury, and where the pro-

ceedings for street improvement were instituted under the act of 1864, and its amendments authorizing street improvements in Oakland, and under the Vrooman act of 1885, neither of which acts required the making or collecting the assessment prior to contracting for or doing the work, it was held by Thornton and McKee, JJ., that the constitutional amendment of 1883-4 was never properly adopted, because not entered in full upon the journals of the legislature; that section 19, article XI, was self-executing and nullified all previous laws not consistent therewith, and no law could be thereafter passed which did not conform thereto, while McKinstry and Sharpstein, JJ., held that the acts of 1864 and 1870 relating to Oakland were still in force, presumably upon the grounds stated in their opinion in *Thomason v. Ruggles*, *supra*, that said acts were not nullified or repealed by the constitution of 1879, and that the Vrooman act of 1885 is not a general law.

The act of March 3, 1883, [Stats. p. 24] is a general law for the organization of municipal corporations, but it is permissive and not mandatory, and does not belong to the class of general laws considered in the case of *Thomason v. Ashworth*, 73 Cal. 73. The city of Stockton having been organized under that act as a city of the fourth class, would be governed by that act and by general laws applicable to cities of its class, so long as it retained the charter adopted under that act, in accordance with section 6, article XI, con-

stitution, but such general law could not deprive the city of the constitutional privilege of framing a charter in accordance with section 8, article XI, and when such new charter was approved by the legislature, it superseded the former charter adopted in pursuance with the provisions of the statute of 1883. *People v. Bagley*, 85 Cal. 343. Since the foregoing decisions, section 6, article XI, has been amended so as to read, "and all charters thereof framed or adopted by authority of this constitution, *except in municipal affairs*, shall be subject to and controlled by general laws." Upon general authority it may be safely assumed that street improvement is a matter of municipal affairs. *People v. Toal* is referred to in *Ex parte Sparks*, 120 Cal. 395.

It was competent for the legislature, prior to adoption of constitution of 1879, to prescribe the form of complaint to be used in an action for collection of delinquent city taxes, and the charter of the city of Stockton of 1872 prescribing such form is not obnoxious to anything contained in section 6 of article XI of said constitution, and remained in force. *City of Stockton v. Insurance Co.*, 73 Cal. 621.

A general law [Stats. 1885, p. 213] establishing police courts in cities of more than thirty thousand and less than one hundred thousand inhabitants, supersedes charter provisions in conflict therewith [citing *In re Ah You*, 82 Cal. 339], and said law is applicable to cities of Oakland and Los Angeles. *People v. Toal*, 23 Pac. Rep. 203. See section 8½ of article XI,

as adopted in 1896, and *Ex parte* Sparks, 120 Cal. 395.

On re-hearing in this case, [85 Cal. 333] the court omits this approval of the Whitney act, and decides the case upon the question as to how municipal or inferior courts can be established and holds that they cannot be established by a charter which is merely approved by the legislature, and that they can only be established by a bill, enacted as other laws, while Chief Justice Beatty dissents and holds that such courts being essentially a part of every municipal system can be established by means of the charter. In *Ex parte* Ah You, Fox J., dissented, and held that sections 6 and 8 of article XI could be reconciled; the latter applying to freeholders' charters only, and that by such charters inferior courts might be established, but otherwise as to municipalities mentioned in section 6, and as to the latter that such courts must be established by general laws. He also maintained that the Whitney act was a special law and urged that the decision in *People v. Henshaw*, 76 Cal. 436 should be reversed. Again in *Ex parte* Riley, 85 Cal. 633, it is said: "The trial took place before a justice of the peace who styled himself *ex officio* police judge of the city of Los Angeles, and who appears to have been acting as such police judge by designation of the mayor, in pursuance of the so-called Whitney act, which it was intimated in the first decision in *People v. Toal*, 23 Pac. Rep. 203, applied to the city of Los Angeles. \* \* \*

"Conceding that the Whitney act does not apply to the city of Los Angeles—and it seems it does not—the justice of the peace had authority to act, and his judgment is valid." This decision however says that the charter provision concerning police courts was finally disposed of at the rehearing in the Toal case, 85 Cal. 333, as being valid.

The consolidation act of San Francisco is controlled by the general law contained in the Political Code in relation to public schools. *Kennedy v Board of Education*, 82 Cal. 483.

Counties are not municipal corporations within the meaning of this section. The policy of creating a new county and fixing its boundaries are matters for legislative determination alone. The legislature has power to create a new county by special act, and provide for its complete organization, making it thereafter subject to general laws. Making certain provisions of the act dependent upon the vote of the people of the county, does not delegate to the people the power to pass or repeal the act, the act being a valid statute from the time of its passage and approval, the legislature itself enacting the provision that it shall cease to be effective unless accepted by the people within a definite time. *People v. County of Orange*, 81 Cal. 489.

That counties are distinguishable from corporations for municipal purposes. See also, *People v. McFadden*, 81 Cal. 497.

Under the power to classify cities for the purposes of *incorporation* and *organization*, .

the legislature cannot make arbitrary discriminations in the mode of exercising the right of eminent domain, and impose upon cities of the fifth and sixth classes conditions which are not made applicable to cities of other classes. *City of Pasadena v. Stimson*, 91 Cal. 238.

The power of legislature to create municipal corporations by general laws, is not confined to cities or towns. It may by general laws authorize the inhabitants of any district to organize themselves into a public corporation for governmental purposes, under such restrictions and by such preliminary steps as it may deem proper, and such public corporation need not be required to be formed in the same manner nor be provided with the same powers as municipal corporations organized for different purposes. The legislature may, by general laws, provide for the creation and maintenance of as many species of public corporations as, in its judgment, are demanded by the welfare of the state, and invest each with such powers only as are appropriate thereto. *In re Bonds of Madera Ir. Dist.*, 92 Cal. 297.

The cases of *Cody v. Murphy*, 89 Cal. 522, and *People v. Henshaw*, 76 Cal. 444, are distinguished in the concurring opinion of Beatty C. J. in *Dougherty v. Austin*, 94 Cal. 621, because those decisions are sustained by section 6, which permits a classification of cities in proportion to population, for the purpose of regulating fees of officers, while the act under consideration [section 211 of county government act of 1883, as amended in 1887, statutes

page 207], attempts to delegate to the supervisors the power to regulate salaries in certain counties.

Irrigation districts are municipal corporations authorized to be organized under general laws, and Wright act [Stats. 1887, p. 29], is constitutional. *In re Bonds Madera Ir. Dist. supra*. Crall v. Board Directors, etc., 87 Cal. 140; Irrigation Dist. v. DeLappe, 79 Cal. 351; Turlock Ir. Dist. v. Williams, 76 Cal. 360.

The term "system" employed by the legislature [Chap. 3, title III, part III, Political Code] itself imports a unity of purpose as well as an entirety of operation, and means one system, which shall be applicable to all the common schools in the state. Kennedy v. Miller, 97 Cal. 429.

Under sections 1001 Civil Code, and 1238 Code of Civil Procedure, a city may, by eminent domain, condemn the waters of a creek for use of inhabitants, though the city charter does not contain such authorization. City of Santa Cruz v. Enright, 95 Cal. 105.

Act of March 31, 1891 [Stats. p. 223], authorizing organization of sanitary districts throughout the state, will not be presumed to affect cities and towns, nor as violation of this section. Woodward v. Fruitvale S. Dist., 99 Cal. 554. Approving, *In re Madera Ir. Dist.* 92 Cal. 296.

A public library in Los Angeles, organized under act of 1874 [Stats. p. 274], was not subject to or controlled by the act of 1880 [Stats. p. 524], but such library was controlled by the



charter of the city of Los Angeles, approved in 1889, repealing act of 1874, and providing for the management and control of the library. *People ex rel. Willis v. Howard*, 94 Cal. 73.

The act of 1889 [Stats. p. 70], relating to the opening, widening, etc., of streets, as a general law, supersedes and controls the provisions of a city charter adopted in pursuance of section 8, article XI, constitution, and such act is not in violation of section 13, article XI, on the ground that it delegates to a commission the power of performing municipal functions, as the commissioners are simply agents to aid the municipal authorities, and its acts are not binding or effective until approved by the city council. Citing sections 8, 13, article XI. *Davies v. City of Los Angeles*, 86 Cal. 37.

The adoption of the present constitution and general legislation enacted thereunder did not affect nor repeal by implication the charter of Berkeley. The provisions of said charter providing for the election of two justices of the peace is still in force. Justice courts may be created by the legislature, and whether a general law has affected such courts existing under a special charter, is a question of legislative intent. *Ex parte Armstrong*, 84 Cal. 655.

A city ordinance against obstruction of sidewalks is not in conflict with the general law contained in sections 370, 372, Penal Code, and section 3479, Civil Code, so long as the offense or punishment are not made greater by the ordinance than by the general law. *Ex parte*

Taylor, 87 Cal. 91. Approved in *Ex parte Rinaldo*, 25 Pac. Rep. 260.

The act of March 2, 1883 [Stats. p. 24], classifying municipal corporations, is a general law and valid, but compensation of city marshal must be fixed by ordinance. *Pritchett v. Stanislaus County*, 73 Cal. 310.

By general law of April 1, 1880 [Stats. p. 63] the legislature in pursuance with the new constitution provided for the establishment of justice courts in incorporated cities and towns. [Secs. 4355, 4370, 4426, 4427 Political Code, and 121 Code of Civil Procedure.] At the same time, the city of San José was acting under a charter granted in 1874 [Stats, 1873-4, p. 395], but it does not appear that any police court had been organized in that city under this general law. This being so, the charter of the city as to the judicial power remained in full force [*Desmond v. Dunn*, 55 Cal. 242; *Wood v. Election Comrs.*, 58 Cal. 561], and a city justice of the peace had authority to try criminal matters arising within the city. *In re Carrillo*, 66 Cal. 3.

That municipal judiciary is to be controlled by general laws. *Bishop v. City of Oakland*, 58 Cal. 572, 575.

The act of 1876 as amended by act of April 1, 1878 [Stats. p. 918], conferring the power of appointing boards of medical examiners, and referring to the three medical societies as "corporations," does not confer the power of appointment by said societies upon them as corporations. The statute is not one creating

corporations, and in this respect the act is not unconstitutional. *Ex parte Frazer*, 54 Cal. 94.

Under its charter of 1863, the city of Sacramento had power to pass an ordinance prohibiting slaughter houses within the city. *Ex parte Heilbron*, 65 Cal. 609.

The ordinance of San Francisco against visiting gambling places is not unconstitutional. It is not the purpose of the constitution to prohibit municipalities from enacting or enforcing special or local laws, but to prohibit the legislature from doing so. And the constitution did not abrogate such municipal regulations. [*Earle v. Board of Education*, 55 Cal. 489; *Desmond v. Dunn* and *McDonald v. Patterson*, distinguished.] *Ex parte Chin Yan*, 60 Cal. 78. See also, *Wood v. Election Commissioners*, 58 Cal. 561, 566.

The act of March 23, 1878 [Stats. p. 442], requiring applicant for saloon license to first procure written consent of a majority of the police commissioners, is unconstitutional. *Purdy v. Sinton*, 56 Cal. 133.

Under the act of March, 1883 [Stats. p. 93], to provide for the organization, etc., of municipal corporations which required petition to be presented to the town council or other governing body of a then existing municipality requesting reorganization under the new law, it is held that where two or more petitions exactly alike are circulated and signed, the names on the several sheets cannot be counted for the purpose of making up the requisite number of signers. The requisite number of

signers must appear upon one petition. *People v. Town of Berkeley*, 102 Cal. 305.

The act of the legislature of March 23, 1893 [Stats. p. 280], purporting to fix salaries for policemen in cities containing certain population, did not make such classification as is authorized by the constitution and was void. *Darcy v. Mayor of San José*, 104 Cal. 644.

The section is referred to in connection with section 11 of the same article in *Ex parte Roach*, 104 Cal. 275.

This section was intended to limit, and not to enlarge, the power of the legislature; and it was intended that the classification there authorized should be by general law in the same sense and in the same way in which it is necessary to provide for the organization and incorporation of cities and towns. *Darcy v. Mayor of San José*, 104 Cal. 647.

Sections six and seven of article XI evidently contemplate the enactment of general laws, providing for *all* corporations for municipal purposes, and not for some only; and such laws must be as general as the subject to which they relate. The legislature has made a classification of municipal corporations, and it is held that legislation is not "special" in the prohibited sense if it affects all corporations of a class alike, but acts designed to affect a single municipality, independently of the general classification, are prohibited, although such acts purport to affect all municipalities having a certain population. An act relating to cities having a certain popula-

tion which population does not distinguish a class under the general classification law is "special" and is prohibited. *Denman v. Broderick*, 111 Cal. 99; *Darcy v. Mayor of San José*, 104 Cal. 642.

In *Staudé v. Election Commissioners* it was held that the provisions of section 4109 of the Political Code as amended in 1881, fixing the time for the election of city and county as well as other officers throughout the state, were applicable to San Francisco by reason of this section of the constitution. *Kahn v. Sutro*, 114 Cal. 318.

The provision of the charter of the city of Los Angeles requiring contracts of the city to be in writing and signed by the mayor or some other authorized person is not in conflict with the constitution nor the general law. Such charter is a "statute" within the meaning of section 1622, Civil Code, and is the organic law of the city [Art. XI, Sec. 8, Const.]. *Frick v. City of Los Angeles*, 115 Cal. 514.

*Thomason v. Ashworth*, 73 Cal. 73, has determined the question that the "Vrooman Act" of 1885 [Stats. p. 147] was a general law within the constitutional sense, and the so-called amendment thereof of March 17, 1891 [Stats. p. 116. Repealed by act of 1893, stats. p. 38], providing for issuing bonds to represent the cost of street improvements is in the same sense "general," and is not in conflict with those provisions prohibiting "special" acts relating to certain subjects. *Hellman v. Shoulters*, 114 Cal. 139.

The classification of municipal corporations by the act of 1883 has on different occasions been held correct. The act of 1891 [Stats. p. 433], attempting to classify cities having a population between fifteen and eighteen thousand, and the creation of police courts therein, does not conform to the act of 1883, and is unconstitutional. [*Ex parte* Reilly, 85 Cal., criticised.] *Ex parte* Giambonini, 117 Cal. 574.

It is said that to construe this section as meaning that the legislature may classify cities and towns "only for the purpose of regulating their incorporation and organization" would be to place too narrow a construction upon it, since it is applicable to cities and towns then already incorporated; the power to classify would be meaningless; it should be employed to supply general laws required by the varying needs of the municipalities so classified. *Rauer v. Williams*, 118 Cal. 405.

The section is evidently intended to limit, and not to enlarge, the power of the legislature. The special authority to thus classify cities and towns would seem to imply that they cannot be otherwise classified for purposes of legislation. [Concurring opinion of Justice Henshaw.] *In re Mitchell*, 120 Cal. 394.

SECTION 7. City and county governments may be merged and consolidated into one municipal government with one set of officers, and may be incorporated under general laws providing for the incorporation and organization of corporations for

municipal purposes. The provisions of this constitution applicable to cities, and also those applicable to counties, so far as not inconsistent or prohibited to cities, shall be applicable to such consolidated government. [Amendment ratified at election Nov. 6, 1894.]

[ORIGINAL SECTION.]

SECTION 7. City and county governments may be merged and consolidated into one municipal government, with one set of officers, and may be incorporated under general laws providing for the incorporation and organization of corporations for municipal purposes. The provisions of this constitution applicable to cities, and also those applicable to counties, so far as not inconsistent or not prohibited to cities, shall be applicable to such consolidated government. In consolidated city and county governments, of more than one hundred thousand population, there shall be two boards of supervisors or houses of legislation, one of which, to consist of twelve persons, shall be elected by general ticket from the city and county at large, and shall hold office for the term of four years, but shall be so classified that after the first election only six shall be elected every two years; the other, to consist of twelve persons, shall be elected every two years, and shall hold office for the term of two years. Any vacancy occurring in the office of supervisor, in either board, shall be filled by the mayor or other chief executive officer.

*[An amendment to this section was voted on at the general election November 8, 1898.]*

An ordinance of a city and county government prohibiting the selling of pools on horse races, except within the enclosure of the race track where the race is to be run, is a valid police regulation. Gambling, in the various modes in which it is practiced, is a proper

subject of police regulation. *Ex parte Tuttle*, 91 Cal. 589.

The consolidation act of San Francisco remains in force by virtue of section 1 of the schedule. The requirement of section 7, article XI, that consolidated city and county governments having a population of more than one hundred thousand persons, shall have two boards of supervisors, or "houses of legislation," is prospective, and does not apply to such governments as already exist. [*Desmond v. Dunn*, 55 Cal. 242, approved.] *Dougherty v. Dunn*, 3 Pac. Rep. 412. [See cases cited under Sec. 6.]

Section 1075 of the Political Code as enacted March 29, 1895 [Stats. p. 338, Palm Ed.], providing for a board of election commissioners for cities and cities and counties having a population of one hundred and fifty thousand or more, is "special" and unconstitutional. Cities or cities and counties of one hundred and fifty thousand or more do not constitute or represent any "class" of municipal corporations constituted by the general law of the state classifying municipalities. Classification cannot be accomplished except by general law, nor will a law affecting them be general unless it affects equally all municipalities belonging to a known class. *Denman v. Broderick*, 111 Cal. 99; *Darcey v. Mayor of San Jose*, 104 Cal. 642.

It is only as municipalities (not as counties) that consolidated city and county gov-



ernments are to be incorporated. *Kahn v. Suto*, 114 Cal. 318.

SECTION 8. Any city containing a population of more than three thousand five hundred inhabitants may frame a charter for its own government, consistent with and subject to the constitution and laws of this state, by causing a board of fifteen freeholders, who shall have been for at least five years qualified electors thereof, to be elected by the qualified voters of said city at any general or special election, whose duty it shall be, within ninety days after such election, to prepare and propose a charter for such city, which shall be signed in duplicate by the members of such board, or a majority of them, and returned, one copy to the mayor thereof, or other chief executive officer of such city, and the other to the recorder of the county. Such proposed charter shall then be published in two daily newspapers of general circulation in such city, for at least twenty days, and the first publication shall be made within twenty days after the completion of the charter; *provided*, that in cities containing a population of not more than ten thousand inhabitants, such proposed charter shall be published in one such daily newspaper; and within not less than thirty days after such publication it shall be submitted to the qualified electors of said city at a general or special election, and if a majority of such qualified electors voting thereat shall ratify the same, it shall thereafter be submitted to the legislature for its approval or rejection as a whole, without power of alteration or amendment. Such approval may be made by concurrent resolution, and if approved by a majority vote of the members elected to each house, it shall become the charter of such city, or if such city be consolidated with a county, then of such city and county, and shall become the organic law thereof, and supersede any existing charter and all amendments thereof, and all laws inconsistent with such charter. A copy of such charter, certified by the mayor, or

chief executive officer, and authenticated by the seal of such city, setting forth the submission of such charter to the electors, and its ratification by them, shall, after the approval of such charter by the legislature, be made, in duplicate, and deposited, one in the office of the secretary of state, and the other, after being recorded in said recorder's office, shall be deposited in the archives of the city, and thereafter all courts shall take judicial notice of said charter. The charter, so ratified, may be amended at intervals of not less than two years by proposals therefor, submitted by the legislative authority of the city to the qualified electors thereof, at a general or special election, held at least forty days after the publication of such proposals for twenty days in a daily newspaper of general circulation in such city, and ratified by at least three-fifths of the qualified electors voting thereat, and approved by the legislature, as herein provided for the approval of the charter. In submitting any such charter, or amendments thereto, any alternative article or proposition may be presented for the choice of the voters, and may be voted on separately without prejudice to others. [Ratification declared Dec. 30, 1892.]

[AMENDMENT RATIFIED AT ELECTION HELD  
APRIL 12, 1887.]

SECTION 8. Any city or consolidated city and county, containing a population of more than one hundred thousand inhabitants, may frame a charter for its own government, consistent with and subject to the constitution and laws of this state, by causing a board of fifteen freeholders, who shall have been for at least five years qualified electors thereof, to be elected by the qualified voters of such city, or city and county, at any general or special election, whose duty it shall be, within one hundred days after such election to prepare and *propose a charter for such city, or city and county, which shall be signed in duplicate by the members of such board, or a majority of them, and returned,*

one copy thereof to the mayor, or other chief executive officer of such city or city and county, and the other to the recorder of deeds of the county, or city and county. Such proposed charter shall then be published in two daily papers of general circulation in such city, or city and county, for at least twenty days, and such publication shall be commenced within twenty (20) days after the completion of the charter, and within not less than thirty days after the completion of such publication, it shall be submitted by the legislative authority of said city, or city and county, to the qualified electors thereof at a general or special election, and if a majority of such qualified electors voting thereat shall ratify the same, it shall thereafter be submitted to the legislature for its approval or rejection as a whole, without power of alteration or amendment; and if approved by a majority vote of the members elected to each house, it shall become the charter of such city, or if such city be consolidated with a county, then of such city and county, and shall become the organic law thereof, and supersede any existing charter and all amendments thereof, and all special laws inconsistent with such charter. A copy of such charter, certified by the mayor, or other chief executive officer, and authenticated by the seal of such city, or city and county, setting forth the submission of such charter to the electors, and its ratification by them, shall be made in duplicate, and deposited, one in the office of the secretary of state, the other, after being recorded in the office of the recorder of deeds of the county, or city and county, among the archives of the city, or city and county. All courts shall take judicial notice thereof. The charter so ratified may be amended at intervals of not less than two years, by proposals therefor submitted by legislative authority of the city, or city and county, to the qualified voters thereof at a general or special election held at least sixty days *after the publication of such proposals, and ratified by at least three-fifths of the qualified electors vot-*

ing thereat, and approved by the legislature as herein provided for the approval of the charter. In submitting any such charter, or amendment thereto, any alternative article or proposition may be presented for the choice of the voters, and may be voted on separately without prejudice to others. Any city, or consolidated city and county, containing a population of more than ten thousand and not more than one hundred thousand inhabitants, may frame a charter for its own government, consistent with and subject to the constitution and laws of the state, by causing a board of fifteen freeholders, who shall have been for at least five years qualified electors thereof, to be elected by the qualified voters of said city, or city and county, at any general or special election, whose duty it shall be, within ninety days after such election, to prepare and propose a charter for such city, or city and county, which shall be signed in duplicate by the members of such board, or a majority of them, and returned, one copy thereof to the mayor, or other chief executive officer of said city, or city and county, and the other to the recorder of the county, or city and county. Such proposed charter shall then be published in two daily papers of general circulation in such city, or city and county, for at least twenty days, and publication shall be commenced within twenty days after the completion of the charter; and within not less than thirty days after the completion of such publication it shall be submitted by the legislative authority of said city, or city and county, to the qualified electors of said city, or city and county, at a general or special election, and if a majority of such qualified electors voting thereat shall ratify the same, it shall thereafter be submitted to the legislature for its approval or rejection as a whole, without power of alteration or amendment, and if approved by a majority vote of the members elected to each house it shall become the charter of such city, or if such city be consolidated with a county, then of such city and county, and shall become the organic law thereof,

and shall supersede any existing charter and all amendments thereof, and all special laws inconsistent with such charter. A copy of such charter, certified by the mayor, or other chief executive officer, and authenticated by the seal of such city, or city and county, setting forth the submission of such charter to the electors, and its ratification by them, shall be made in duplicate, and deposited, one in the office of the secretary of state, and the other, after being recorded in the office of recorder of deeds of the county, or city and county, among the archives of the city, or city and county; and thereafter all courts shall take judicial notice thereof. The charter so ratified may be amended, at intervals of not less than two years, by proposals therefor, submitted by the legislative authority of the city, or city and county, to the qualified electors thereof, at a general or special election held at least sixty days after the publication of such proposals, and ratified by at least three-fifths of the qualified electors voting thereat, and approved by the legislature as herein provided for the approval of the charter. In submitting any such charter, or amendment thereto, any alternative article or proposition may be presented for the choice of the voters, and may be voted on separately without prejudice to others.

[ORIGINAL SECTION.]

SECTION 8. Any city containing a population of more than one hundred thousand inhabitants may frame a charter for its own government, consistent with and subject to the constitution and laws of this state, by causing a board of fifteen freeholders, who shall have been for at least five years qualified electors thereof, to be elected by the qualified voters of such city, at any general or special election, whose duty it shall be, within ninety days after such election, to prepare and propose a charter for such city, which shall be signed in duplicate by the members of such board, or a majority of them, and returned one copy thereof to the mayor, or other chief executive officer of

such city, and the other to the recorder of deeds of the county. Such proposed charter shall then be published in two daily papers of general circulation in such city for at least twenty days, and within not less than thirty days after such publication it shall be submitted to the qualified electors of such city at a general or special election, and if a majority of such qualified electors voting thereat shall ratify the same, it shall thereafter be submitted to the legislature for its approval or rejection as a whole, without power of alteration or amendment, and if approved by a majority vote of the members elected to each house, it shall become the charter of such city, or if such city be consolidated with a county, then of such city and county, and shall become the organic law thereof, and supersede any existing charter and all amendments thereof, and all special laws inconsistent with such charter. A copy of such charter, certified by the mayor, or chief executive officer, and authenticated by the seal of such city, setting forth the submission of such charter to the electors, and its ratification by them, shall be made in duplicate, and deposited, one in the office of the secretary of state, the other, after being recorded in the office of the recorder of deeds of the county, or city and county, among the archives of the city, all courts shall take judicial notice thereof. The charter so ratified may be amended at intervals of not less than two years, by proposals therefor submitted by legislative authority of the city, to the qualified voters thereof at a general or special election held at least sixty days after the publication of such proposals, and ratified by at least three-fifths of the qualified electors voting thereat, and approved by the legislature as herein provided for the approval of the charter. In submitting any such charter, or amendment thereto, any alternative article or proposition may be presented for the choice of the voters, *and may be voted on separately without prejudice to others.*

The amendment of charter in this section refers to amendments made by and at the instance of the officers and electors of the city. It is also provided [Sec. 6. Art. XI] that all cities shall be controlled by general laws. The act of March 19, 1889 [Stats. p. 356], to provide for changing the boundaries of cities and municipal corporations, and to exclude territory therefrom is a general law, and the changing of boundaries by excluding certain territory from the city of San Diego in accordance with this act is not such an amendment as is prohibited within two years. [*People v. City of Oakland*, 92 Cal. 611, distinguished.] *People v. City of Coronado*, 100 Cal. 571.

A charter providing for adjustment and fixing anew all official salaries at stated periods by council, authorizes the council to reduce salaries, and such action by the council is not an amendment of the charter. *Coyne v. Rennie*, 97 Cal. 590.

A city may provide in its charter for assessing and collecting taxes for municipal purposes, though no general law has been passed by the legislature authorizing such charter provisions. The right of taxation is necessary for exercise of municipal powers, and it is immaterial that such a charter was approved by legislature by resolution instead of by bill—so held as to Los Angeles city charter adopted prior to amendment of 1885. [Art. XI, Sec. 12; Art. XIII, Sec. 1.] *Security Sav. Bank and T. Co. v. Hinton*, 97 Cal. 214.

*The boundaries of a municipal corporation*

contained in its charter are the extent of the territory over which the municipal authority for taxation may be exercised. A new charter prescribing boundaries different from those prescribed in a former charter supersedes the former, and detaches from the city territory included in the former and not included in the latter charter. Questions that have arisen in some cases as to what extent and for what purpose a municipal corporation may exercise authority beyond its corporate boundaries, as to abate a nuisance or obtain water, etc., is not involved in this case. *People v. City of Oakland*, 92 Cal. 611.

The legislature is not synonymous with the law making power. The approval of the charter of Los Angeles city by resolution of both houses of the legislature was sufficient to give it validity without the enactment of a bill. *Brooks v. Fischer*, 79 Cal. 173.

The charters of the city of Los Angeles adopted prior to 1889, are controlled by general laws, and their provisions relative to opening, widening, etc., of streets, must be subject to the act of 1889 [Stats. p. 70] upon the same subject. The latter act does not provide for taking private property without due process of law, since notice of every material step to be taken either against the owner of the land to be taken or the land to be assessed must be given, and opportunity to be heard is given at every step of the proceedings. *That such notice may be given by posting instead of personally, does not render the*



proceedings unconstitutional. Citing sections 6, 13, article XI. *Davies v. City of Los Angeles*, 86 Cal. 37.

The act of March 3, 1883 [Stats. p. 24] is a general law for the organization of municipal corporations, but it is permissive and not mandatory, and does not belong to the class of general laws considered in the case of *Thomason v. Ashworth*, 73 Cal. 73. The city of Stockton having been organized under that act as a city of the fourth class would be governed by that act and general laws applicable to cities of its class, in accordance with the provisions of section 6, article XI, constitution, so long as it retained the charter adopted under that act, but such general law could not deprive the city of the constitutional privilege of framing a charter in accordance with section 8, article XI, and when such new charter was approved by the legislature, it superseded the former charter adopted in pursuance with the provisions of the act of 1883. *People v. Bagley*, 85 Cal. 343.

It is not competent for the legislature to establish police courts in a city by a charter for such city, which charter is only approved by a majority of the members elected to both houses. Such courts can only be established by bill enacted and approved as provided in sections 15, 16, article IV. *People v. Toal*, 85 Cal. 333, Beatty C. J. dissenting. Also commissioner's opinion, 23 Pac. Rep. 203. But see section 8½ of article XI, and *Ex parte Sparks*, 120 Cal. 395.

It is held that a municipal charter need not be passed as a bill; that the legislature in approving a charter does not enact the law, but that such charter, as a law, is enacted by the people who frame it, and that the legislature is not called upon to, and does not, in approving the charter, determine whether the people have proceeded regularly in framing and adopting it. That the legislature exercises the same power as the governor when a bill is presented to him which has been passed by the legislature, of approval or rejection, and it is for the courts to determine whether the steps precedent to its adoption have been regularly pursued. The constitution is mandatory as to these precedent steps, and the mode is the measure of power. *People v. Gunn*, 85 Cal. 238.

The term city includes a city and county government, so held with reference to section 1058, Code of Civil Procedure, exempting cities from giving undertakings as parties to civil actions, approving *People v. Hoge*, 55 Cal. 612, where it was held that a city and county could frame a charter. *Morgan v. Menzies*, 60 Cal. 341,

The constitutional provision authorizing any city containing a population of more than one hundred thousand inhabitants to frame a charter is self-acting. *People v. Hoge, supra*.

This section is referred to in *Yarnell v. City of Los Angeles*, 87 Cal. 603; see also *People v. Henshaw*, 76 Cal. 436, and *Ex parte Ah You*, 82 Cal. 339, 343 as to effect of these charters 9

upon former charters of cities. See also dissenting opinion of McKinstry, J., in *Thomason v. Ashworth*, 73 Cal. 80. All the other decisions affecting this section are collected under other sections of this article from 1 to 13, and are referred to in the cases here collected.

This section does not refer to consolidated city and county governments, but to counties as distinguished from municipalities. [*People v. Hoge*, 55 Cal. 612]. *Kahn v. Sutro*, 114 Cal. 318. See notes under section 7 of this article. And see *Hellman v. Shoulters*, 114 Cal. 147, where the section is commented on.

This provision of the constitution authorizing the framing of charters is self-executing. [*People v. Hoge*, 55 Cal. 612], and the "special election" therein contemplated for submitting amendments to vote of the people is a special election called for that purpose. All elections are either general or special, and an election for filling a vacancy in office under section 1043 of the Political Code is not the only kind of "special" election. *People v. Davie*, 114 Cal. 363.

The charter of the city of Los Angeles is "a statute" within the meaning of section 1622, Civil Code, and is the organic law of the city. Its provisions relating to the mode of executing contracts is not violative of general law nor of the constitution. *Frick v. City of Los Angeles*, 115 Cal. 514.

The municipal charter of Sacramento is not unconstitutional in conferring judicial power upon the board of trustees to try a municipal

officer for offenses under the charter. The removal of city superintendent of streets is purely a municipal matter. *Croly v. City of Sacramento*, 119 Cal. 232.

The legislative power is expressly given to frame a charter, notwithstanding the comprehensive language in which it is elsewhere declared that the legislative power is vested in the legislature. *Croly v. City of Sacramento*, 119 Cal. 233.

The section is referred to in *People v. Hecht*, 105 Cal. 623, upon the point that the election of two ineligible members on a board of freeholders for framing a city charter does not disqualify the entire board. [Political Code, section 15.] *People v. Hecht*, 105 Cal. 625-627. As to a disqualified member of a grand jury, see *People v. Simmons*, 119 Cal. 3.

SECTION 8½. It shall be competent, in all charters framed under the authority given by section eight of article eleven of this constitution, to provide, in addition to those provisions allowable by this constitution and by the laws of the state, as follows:

1. For the constitution, regulation, government, and jurisdiction of police courts, and for the manner in which, the times at which, and the terms for which the judges of such courts shall be elected or appointed, and for the compensation of said judges and of their clerks and attaches.

2. For the manner in which, the times at which, and the terms for which the members of boards of education shall be elected or appointed, and the number which shall constitute any one of such boards.

3. For the manner in which, the times at which, and the terms for which the members of the boards

of police commissioners shall be elected or appointed; and for the constitution, regulation, compensation, and government of such boards, and of the municipal police force.

4. For the manner in which, the times at which, and the terms for which the members of all boards of election shall be elected or appointed, and for the constitution, regulation, compensation, and government of such boards, and of their clerks and attaches; and for all expenses incident to the holding of any election.

Where a city and county government has been merged and consolidated into one municipal government, it shall also be competent in any charter framed under said section eight of said article eleven, to provide for the manner in which, the times at which, and the terms for which the several county officers shall be elected or appointed; for their compensation, and for the number of deputies that each shall have, and for the compensation payable to each of such deputies. [*Ratified at election held Nov. 3, 1896.*]

The constitution may provide any convenient mode for enacting laws. Charters adopted by authority of the constitution are laws. It is not made a law by the people of the municipality, but is only proposed by them. This mode for establishing courts by freeholders' charters must be held an exception to the general rule, but such courts could not be so established by a charter adopted prior to this amendment. *Ex parte Sparks*, 120 Cal. 399.

SECTION 9. The compensation of any county, city, town, or municipal officer shall not be increased *after his election* or during his term of office; nor shall the term of any such officer be extended *beyond the period for which he is elected or appointed.*

A district attorney elected prior to the county government act of 1891 [Stats. p. 295], is not entitled to have the salary of a deputy paid by the county. *Welsh v. Bramlett*, 98 Cal. 219.

Official salary may be reduced by city council where the charter provides that council shall at stated periods readjust and fix anew all official salaries. Election is not contractual. *Coyne v. Rennie*, 97 Cal. 590.

A county clerk elected after the amendment to county government act [Stats. 1887, p. 207], authorizing supervisors to allow deputies, and for such officers to be paid from the county fund, is not entitled to have such a deputy so paid. This provision is contrary to constitution, article XI, section 9, and is not uniform in operation [article I, section 11], and is an attempt to vest legislative function in supervisors. [Article XI, section 5.] *Dougherty v. Austin*, 94 Cal. 601, 626; *McFarland and Paterson, JJ.*, dissenting.

The words "compensation" and "salary" are used synonymously in the constitution and county government act. It is the compensation or salary for services rendered, and not expenses of the office, which the constitution provides shall not be raised. The allowance to superintendent of public instruction, of his actual and necessary traveling expenses, not exceeding ten dollars per district per annum, provided for by section 1552, Political Code, as amended in March, 1889, is not an increase of the salary of the office of superintendent pre-

viously elected and then in office. Similar provisions are cited with reference to expenses of justices of Supreme Court and judges of Superior Court in holding courts at different places. *Kirkwood v. Soto*, 87 Cal. 393.

The amendment to section 274, Code of Civil Procedure, of March 21, 1885 [Stats. p. 218], is unconstitutional in delegating to the judge of Superior Court power to fix the salary to be paid shorthand reporters, and had not the force to repeal the former provision requiring fees of reporters to be fixed by the judge, not exceeding a certain sum per day, and certain rate for transcribing. [*Smith v. Strother*, approved.] *McAllister v. Hamlin*, 83 Cal. 362.

Under county government act, March 14, 1883 [Stats. p. 299], and the constitution, the salary of an appointee to fill vacancy in office of superintendent of schools must remain the same as that of the incumbent before the vacancy occurred, and the provision of said act increasing the salary could not take effect until the expiration of the full term. *Larew v. Newman*, 81 Cal. 588.

The act of 1880 [Stats. p. 78], amending section 110, Code of Civil Procedure, relating to term of office of justices of the peace is constitutional, and it was necessary to elect said officers at the election of that year. *Bailey v. Supervisors*, 66 Cal. 10.

*The city of Stockton adopted a new charter under and in pursuance with section 8, article XI as amended, which charter was approved March 2, 1889 [Stats. p. 578], and by the terms*

of this charter the police court under the old charter and the court of the city justice of the peace were practically consolidated. It did not abolish the court of the justice of the peace, but added to it the duties theretofore performed by the police court. *Held*, the person holding the office of justice of the peace and performing these duties was not entitled to a salary for each, but was entitled to the salary provided for the office of justice of the peace. The salary could not be increased even by the legislature during his term of office nor by local or special law at any time. *Milner v. Reibenstein*, 85 Cal. 593.

This section is not violated by an ordinance of the supervisors passed in pursuance of subdivision 14 of section 183 of the county government act of 1891 [Stats. p. 377], which fixes a salary of constable at less than the compensation formerly received by that officer, although the act by which the legislature attempted to vest the supervisors with power to regulate such compensation is void by reason of section 5 of article XI, constitution. *People v. Johnson*, 95 Cal. 471.

As to extension of term of office, this section is referred to in concurring opinion of Thornton, J., in *Rosborough v. Boardman*, 67 Cal. 119, and of McKee, J., in *Treadwell v. Yolo Co.*, 62 Cal. 566, and in dissenting opinion of McKinstry, J., in *Donahue v. Graham*, 61 Cal. 277. Also see *Darcy v. Mayor of San Jose*, 104 Cal. 644, noted under subdivision



29, section 25, article IV, *ante.*, and *Hall v. McGettigan*, 114 Cal. 123.

The provisions of section 173 of the county government act of 1893 [Stats. pp. 415, 416], empowering certain county officers in counties of the eleventh class to appoint a specified number of deputies whose salaries were fixed by the act and made payable out of the county treasury, are not unconstitutional. *Tulare County v. May*, 118 Cal. 305.

It cannot be determined in advance whether the compensation provided for supervisors by the county government act of 1893 is greater than that provided by the act in force at the time of their election. If it is greater by the latter act, then the act is unconstitutional. *County of Tulare v. Jefferds*, 118 Cal. 362.

To allow extra compensation to a city attorney who receives a stated salary, for services in a suit against the city, however valuable his services, or however important the suit, would be to allow an increase of salary, and would violate this section of the constitution. *Buck v. City of Eureka*, 109 Cal. 508.

SECTION 10. No county, city, town, or other public or municipal corporation, nor the inhabitants thereof, nor the property therein, shall be released or discharged from its or their proportionate share of taxes to be levied for state purposes, nor shall commutation for such taxes be authorized in any form whatsoever.

*Cities and towns are not the only municipal corporations that may be created by the legislature, and the provisions contained in subdi-*

vision 6 of this article are not controlling in the organization of other municipal corporations. While the constitution has carefully provided for incorporation and classification of cities and towns, it makes no similar provision for other municipal corporations. There is no limitation upon the power of the legislature to authorize the formation of such corporations for any public purpose whatever. *In re Madera Irrigation Dist.*, 92 Cal. 296, 319.

This section is referred to in dissenting opinion of McKinstry, J., in *Donahue v. Graham*, 61 Cal. 277.

SECTION 11. Any county, city, town, or township may make and enforce within its limits all such local, police, sanitary, and other regulations as are not in conflict with general laws.

The act of March 9, 1885 [Stats. p. 45], to regulate the height of division fences or partition walls in cities and towns construed as constitutional as to walls or fences on the division line, but that an owner has the right to secure the seclusion of his own premises by erecting fences or structures on his own land, even though they may exclude light or air from adjoining premises, and in so far as the act purports to prohibit such structures, it would be held unconstitutional. *Western G. & M. Co. v. Knickerbocker*, 103 Cal. 111.

A general law authorizing organization of sanitary districts, construed not to include cities and towns. *Woodward v. Fruitvale S. Dist.*, 99 Cal. 554. Approved, *In re Madera Irr. Dist.*, 92 Cal. 296.

A city ordinance in effect prohibiting sale of liquors, etc., in any place where females are permitted to wait or attend upon men, or in any dance cellar, etc., is a constitutional exercise of power of police regulation, and is not in conflict with section 18 of article XX. *Ex parte Hayes*, 98 Cal. 555.

An ordinance of the city and county prohibiting the employment of females in places where liquors are sold and prohibiting females from serving in such places, the occupation not being, except by said ordinance and section 306, Penal Code, unlawful, is unconstitutional, as discriminating against persons on account of sex [Sec. 18, Art. XX], and cannot be sustained as a reasonable exercise of police regulation. *Ex parte Maguire*, 57 Cal. 604.

Unusual restrictions upon lawful business may be an arbitrary exercise of police power and void. So held with reference to ordinance of supervisors requiring insane asylum, inebriate home, etc., to be fireproof, enclosed by wall, etc. *Ex parte Whitwell*, 98 Cal. 73.

The laundry ordinance, requiring written consent of majority of property owners of the block and of the four blocks immediately surrounding that whereon it is proposed to conduct the business, without reference to manner of conducting the business, is not a reasonable police regulation. *Ex parte Sing Lee*, 96 Cal. 354.

The brick building laundry ordinance of San Francisco was not unconstitutional. *Matter*

of Yick Wo, 68 Cal. 294. See also *Ex parte Moynier*, 65 Cal. 33.

The delegation of power to cities and counties to make and enforce local police and sanitary regulations is authority to make only such as are useful and necessary under their respective charters. The act of March 28, 1878, [Stats. p. 685] re-organizing and regulating fire department in San Francisco, was part of the charter of that city and county, and the Barry ordinance of March 16, 1889, was unauthorized and invalid. The fire department was one of the branches of the municipal government, and the supervisors had no more power to overthrow it than it had to overthrow the supervisors. [People v. Perry, 79 Cal. 105, distinguished.] People v. Wilshire, 96 Cal. 605.

A city ordinance may provide that a violation thereof should be punished by imprisonment "for ten days, and by fine of one hundred and fifty dollars," and that in default of payment of the fine, defendant shall be imprisoned "until the fine be satisfied, in the proportion of one day for every two dollars of the fine remaining unpaid." [*Ex parte Rosenheim*, 83 Cal. 390, distinguished.] *Ex parte Green*, 94 Cal. 391, McFarland and Paterson, JJ., dissenting.

An ordinance prohibiting selling pools on horse races is valid. Any practice or business the tendency of which, as shown by experience, is to weaken or corrupt the morals, encourage idleness, etc., is a legitimate subject

for regulation or prohibition. *Ex parte Tuttle*, 91 Cal. 589.

Each municipality has the right to determine what police regulations it will prescribe, and the only limitation upon the exercise of this power is, that such regulations shall not be in conflict with the constitution and general laws of the state. There being no general law prohibiting the carrying of concealed weapons, an ordinance prohibiting it is within the police power. *Ex parte Cheney*, 90 Cal. 617.

The power conferred by county government act to supervisors to provide for destruction of wild animals, etc., does not authorize an ordinance prescribing a penalty upon the owner or occupant of land for not exterminating wild animals. An ordinance requiring owners and occupants of land to exterminate and destroy ground-squirrels on their respective lands, and thereafter to keep said lands free and clear therefrom, and declaring a violation thereof a misdemeanor, is unreasonable and burdensome, and is not within either the police, sanitary or "other" regulations authorized by the constitution. *Ex parte Hodges*, 87 Cal. 162.

A city ordinance is valid which declares an obstruction on streets unlawful, and provides a penalty for refusal to remove it upon notice, the penalty not being different in character or in excess of that prescribed by the state law which declares such obstructions a nuisance and a misdemeanor. *Ex parte Tay-*

lor, 87 Cal. 91; *Ex parte* Rinaldo, 25 Pac. Rep. 260.

There is no general law of the state prohibiting visiting a place where a gambling game is carried on, although to bet at such games is punishable by fine not exceeding \$500.00, or imprisonment not exceeding six months. [Pen. Code, Sec. 330.] An ordinance of San Francisco making it an offense to become a visitor at such gambling place, and imposing a fine not exceeding \$1000.00, or imprisonment not exceeding six months, and not less than twenty dollars or ten days, and not imposing both fine and imprisonment, was held not in contravention of general law, since it does not appear that any punishment greater than that prescribed by the general law has been imposed. *Ex parte* Boswell, 86 Cal. 232. [See Sec. 330 as amended in 1891, and see also Sec. 318, Pen. Code.]

Section 4045 added to Political Code by act of March 13, 1883 [Stats. p. 297], requiring license taxes to be collected as provided by other provisions of the code, embracing section 3360, by which latter section it was required that actions for such purpose shall be prosecuted in the name of the people of the state of California, was repealed by the general law known as the county government act, passed the following day. [Stats. 1883, p. 299.] [Approving *Ex parte* Benjamin, 65 Cal. 310, and *County of Santa Clara v. R. R. Co.*, 66 Cal. 642.] And the action to recover such tax might be instituted as provided by

ordinance of supervisors, in the name of the county. *Mendocino County v. Bank of Mendocino*, 86 Cal. 255.

But where a county ordinance imposing license tax also provides that action to recover the same shall be in the name of "the people," an action cannot be maintained in name of the county as being the real party in interest. The failure to take out the license does not make defendant liable to the county in an action of debt. When a right or obligation is created and a remedy given by valid statute or ordinance, the remedy so provided is exclusive, and it is only where the right exists at common law that the statutory remedy can be regarded as cumulative. *County of Monterey v. Abbott*, 77 Cal. 541.

An ordinance of San Francisco [No. 2162] regulating the granting of certificates of death and permits for interments, being in conflict with provisions of Political Code, sections 3012, 3025, 3084, and Penal Code, 377, on same subject, is unconstitutional and void, and a person convicted of violation of such ordinance will be discharged on *habeas corpus*. *Ex parte Keeney*, 84 Cal. 304.

The ordinance establishing fire limits in San Francisco is valid. *McClosky v. Kreling*, 76 Cal. 511.

The city of Eureka has power to pass an ordinance imposing an annual license tax of two hundred dollars upon the business of selling spirituous liquors, and to declare a

violation of the ordinance a misdemeanor. *Ex parte McNally*, 73 Cal. 632.

An ordinance of the supervisors of Mono county imposing an annual license of fifty dollars per one thousand head of sheep, upon the business of herding, grazing and pasturing sheep in that county, and declaring a violation of the ordinance a misdemeanor is valid. *Ex parte Mirande*, 73 Cal. 365.

A municipal corporation has no authority to pass an ordinance punishing precisely the same acts which are punishable under the general laws of the state. So held with reference to opium smoking. *In re Sic*, 73 Cal. 142.

A city ordinance regulating the sale of opium is within the police and sanitary regulations delegated to cities. Cities may impose penalties in addition to those imposed by state laws. *Ex parte Hong Shen*, 98 Cal. 681.

It is within a reasonable exercise of the power of the police and sanitary regulations in the city of San Francisco to prohibit the keeping of more than two cows within certain portions of the city. *In re Linehan*, 72 Cal. 114.

An ordinance prohibiting the alteration or repair of wooden buildings within certain designated fire limits in San Francisco, held a proper exercise of police power. *Ex parte Fiske*, 72 Cal. 125.

An ordinance of the board of supervisors of Alameda county imposing a license upon the peddling, vending, etc., of goods, wares and merchandise other than the manufactures or



productions of this state is declared unconstitutional and void, as a regulation of commerce, control over which is by the U. S. constitution vested in congress. [Citing decisions of U. S. Supreme court.] *Ex parte Thomas*, 71 Cal. 204.

An ordinance of the city of Stockton requiring an applicant for saloon license to present his petition accompanied by a certificate of five respectable citizens of the neighborhood in which the business is to be carried on, is not unreasonable, and is valid. *In re Bickerstaff*, 70 Cal. 35.

The supervisors have power to pass an ordinance imposing a license tax upon the business of selling wines and liquors, and a person carrying on such business in a city within the county is not exempt from paying such license by reason of his having paid a license tax for the same purpose in pursuance of an ordinance of the city. *In re Lawrence*, 69 Cal. 608.

The constitution did not abolish the municipalities of the state, nor abrogate their charters, nor change the powers granted by them, except where they may have been enlarged or contracted by its provisions; on the contrary, the constitution made existing municipalities more independent of state control, by prohibiting the legislature from passing special laws imposing taxes for municipal purposes, and conferring upon existing municipalities power to make and administer, within their respective limits, all such local,

police, sanitary and other laws as are not in conflict with general laws. [Art. XI, Sec. 11.] The city of Los Angeles had power under its charter in 1885, to pass an ordinance imposing a license tax upon business callings [including places where liquors are retailed], and to declare a violation of the ordinance to be a misdemeanor. *In re Guerrero*, 69 Cal. 88.

Laundry ordinance of San Francisco, prescribing manner in which buildings used as laundries shall be constructed, is a reasonable exercise of power to impose police and sanitary regulations. *Ex parte White*, 67 Cal. 102.

A city has power to pass an ordinance requiring a license to be obtained by every person, who at a fixed place of business sells any goods, wares or merchandise, and the city of Oakland can exercise such power under the act of April 24, 1862 [Stats. p. 350] amending its charter. *Ex parte Mount*, 66 Cal. 448.

The powers for police regulations given by this section are very broad, and are sufficient to authorize a city ordinance prohibiting the depositing of rubbish, garbage, broken ware, filth, etc., upon the streets, or anywhere except in such places as may be designated therefor by superintendent of streets. *Ex parte Casinello*, 62 Cal. 540.

An ordinance passed under authority of county government act of 1883, imposing a license tax upon the business of selling liquors *is constitutional*, *per Thornton J.* Such ordinance is also authorized by section 12, arti-

cle XI. [Citing *In re Stuart*, 61 Cal. 375.] *Ex parte Wolters*, 65 Cal. 269.

Prior to constitution of 1879, municipal corporations possessed only such powers as were expressly, or by necessary implication conferred by their charters, but under the present provision they are empowered to enact all such police, sanitary and other regulations as are not in conflict with general laws. A city of the sixth class may prohibit the sale of intoxicating liquors, although the municipal corporation act of 1883 does not contain express authority to do so, while the same act does confer such express authority upon cities of the fourth class. *Ex parte Campbell*, 74 Cal. 20. And so with regard to liquor license in San Francisco. The constitution itself confers sufficient authority. *In re Stuart*, 61 Cal. 374.

As to whether a municipal ordinance is unreasonable, and therefore void, the rule is, that where the legislature has in terms conferred upon a municipal corporation the power to pass an ordinance of a specified and defined character, if the power thus conferred is not in conflict with the constitution, an ordinance pursuant thereto cannot be impeached as invalid because it would have been considered unreasonable if it had been passed under the incidental powers of the corporation, or under a grant of power general in its nature. What the legislature distinctly says may be done cannot be *set aside* by the courts because they may *deem it unreasonable or against public policy*.

Where the power to legislate on a given subject is conferred and the mode of its exercise is not prescribed, then the ordinance passed must be a reasonable exercise of the power. *Ex parte Chin Yan*, 60 Cal. 78.

An ordinance adopted by supervisors of San Bernardino imposing a license tax of twenty-five dollars per month upon the business of selling liquors, is not unreasonable, oppressive, or in restraint of trade. *Ex parte Benninger*, 64 Cal. 291.

The power given a municipality to pass local laws and regulations carries the power to amend a former existing regulation upon the same subject; and an ordinance of the city of San Francisco may be valid which conflicts with a former legislative act which related exclusively to San Francisco, upon the subject of retail liquor licenses therein. An ordinance prohibiting the granting of a license to persons who had been guilty of a felony or of employing female waitresses in a saloon or dance cellar, is not *ex post facto*; it does not convict of any crime, but simply furnishes a standard applicable to all persons as to their fitness. *Foster v. Police Commissioners*, 102 Cal. 490.

A county has no authority to demand a license tax except from those persons who engage in carrying on some business. A single act does not constitute a business, and where the ordinance is not directed at the business *there is no authority to commence an action to recover such license tax*. Provisions for

collection of taxes are *in invitum*. Any attempt on the part of the state, or of a county as a subdivision of the state, to take the property of an individual for public purposes by way of taxation, must find express statutory warrant, and all laws having this object are to be strictly construed in favor of the individual as against the state. Whether his property is to be taken by seizure or suit, the rule is the same. *Merced County v. Helm*, 102 Cal. 163.

Where the ordinance is not directed at the "business" of selling, etc., but is directed at any act of selling liquors, one who fails or refuses to take out a license for such act cannot lawfully be arrested upon a penal charge of carrying on the business of selling without a license, and should be discharged on *habeas corpus*. *Ex parte Mason*, 102 Cal. 172. The ordinances in the above cases are referred to and distinguished in *Ex parte Mansfield*, 106 Cal. 401, where an ordinance reading: "Every person who in any saloon, bar, inn, tavern, hotel, tippling place, or other public place, sells or gives away \* \* \* liquors or wines in less quantities than one quart, must obtain a license," etc., was sustained. In *Ex parte Suebe*, 115 Cal. 630, the foregoing cases are again commented upon and it is said that the rule applied in the case of *Merced County v. Helm* went to the extreme verge of strictness, "and the court has been disposed to limit rather than extend its application," and it was held that the provision

of the ordinance then under consideration requiring that "every person who sells spirituous, malt, or fermented liquors or wines in quantities less than one quart must obtain a license," etc., was not to be construed by itself and that the whole ordinance being construed together was not subject to the criticism contained in the case of *Merced County v. Helm*.

The act of March 9, 1885 [Stats. p. 45], regulating height of division fences (on the division line) in cities is not unconstitutional. The doctrine that an adjoining proprietor of land may by user acquire an easement over adjoining land for light and air does not prevail in this country. It is not competent for the legislature to vest in an adjoining proprietor the power to prevent his neighbor from building on his own land such structures as he pleases, provided it is not a nuisance, and it is not a nuisance merely because it obstructs the passage of light or air. *Western etc. Co. v. Knickerbocker*, 103 Cal. 113.

This section confers the power to make these regulations upon cities as well as upon counties, the only limitation upon the power being that the regulations shall not be in conflict with general laws. Where the constitution grants legislative power to municipal corporations the source of the power is the same as is that exercised by the legislature, and an ordinance within the legislative power of the municipal corporation is to be construed with *the same effect as if it had been adopted by the legislature*. An ordinance passed by a

municipality whose territory is included within a county will, as to such city, supersede an ordinance of the county upon the same subject. *Ex parte Roach*, 104 Cal. 274.

The "regulations" which the supervisors are authorized to make are rules of conduct to be observed by the citizens, and cannot be construed to include the purchase of real estate. [Site for a small-pox hospital.] *Von Schmidt v. Widber*, 105 Cal. 161.

By this constitutional provision and by its charter, the city of Los Angeles was authorized to exercise the police power of the state for local purposes, and the corporate authorities could exercise this authority in improvement of the banks and channel of Los Angeles river, as they might in the exercise of a sound discretion, deem most advantageous to the city and its inhabitants. *De Baker v. Railway Co.*, 106 Cal. 283.

The limiting or regulating the use of steam carpet cleaning machines is within the scope of the power of police and sanitary regulations conferred upon municipal authorities. It is not essential to the right to exercise this power that the matter prohibited would constitute a nuisance *per se*. The power granted not only includes nuisances, but also extends to everything expedient to be regulated or prohibited for the preservation of the public health or general welfare. *Ex parte Lacey*, 108 Cal. 328.

An ordinance of San Francisco which prohibited the further purchase of lots for burial

within the municipality, and provided for further burials within the city to be made only in lots theretofore acquired for that purpose, is held to be an unreasonable exercise of the "police power." It is suggested that even in the case of a valid ordinance there would be no complete offense short of an act of burial; the purchase and sale of a lot not being in the nature of a crime. *Ex parte Bohen*, 115 Cal. 372.

Although it has been decided in *County of Los Angeles v. Lopez*, 104 Cal. 257, and earlier cases that the supervisors of a county have no power to create the office of tax collector, yet such board has power to order license taxes to be paid to a county officer (tax collector) having authority to receive them. *Ventura County v. Clay*, 112 Cal. 66.

A city ordinance requiring a license tax of fifty dollars per quarter from itinerant vendors of merchandise, is not unreasonable nor void although the rate is greater than the license required of those who vend the same lines of goods at fixed places of business. License taxes may lawfully be discriminating. *Ex parte Haskell*, 112 Cal. 415. See notes under section 1, article I, and Sec. 18, Art. XX.

SECTION 12. The legislature shall have no power to impose taxes upon counties, cities, towns, or other public or municipal corporations, or upon the inhabitants or property thereof, for county, city, town, or other municipal purposes, but may, by general laws, vest in the corporate authorities thereof the power to assess and collect taxes for such purposes.



Under county government act of March 14, 1883 [Stats. p. 299] a county could by ordinance of supervisors impose a license tax upon the business of retailing liquors and create the office of license tax collector and appoint a suitable person to perform the duties of such office. *People v. Ferguson*, 65 Cal. 288, McKee J., dissenting.

An ordinance of supervisors under county government act, section 25, subdivision 28, imposing a license tax on the business of sheep raising is valid. Such license is a tax within the meaning of this section. [*People v. Martin*, 60 Cal. 153.] Such license tax shall not discriminate between citizens of the county where the same is imposed and citizens of another county. [*Lassen Co. v. Cone*, 72 Cal. 388.] The office of license tax collector may not be created by supervisors. [*People v. Ferguson*, 65 Cal. 288, criticised]; *El Dorado County v. Meiss*, 100 Cal. 268. [See notes section 5, article XI.]

The legislature may approve a city charter containing provisions for assessing and collecting municipal taxes without any general law conferring power of taxation. Taxation is an essential attribute of municipal corporations. So held with reference to a charter "approved" by the legislature instead of being enacted by bill. The power to tax is further implied by sections 13, 16, 18, article

XI. Security Sav. Bank & Trust Co. v. Hinton, 97 Cal. 214.

The legislature may vest in irrigation districts the power of taxation, by general laws, and its powers of creating municipal or public corporations are not confined to cities and towns. That a city or town may be included within the boundaries of an irrigation district does not render the Wright act unconstitutional. The power of the legislature over the subject of taxation is unlimited except as restricted by the constitution and extends to providing assessments for local improvements upon any basis of apportionment which it may select, and such basis does not depend upon the fact of any special local benefit to the tax payer. If it appears from the general scope of the act that its object is for the general benefit of the public and the means to be employed are of a public character, the act will be upheld, although incidental advantages will accrue to individuals beyond those enjoyed by the general public. *In re Bonds of Madera, Ir. Dist.*, 92 Cal. 296. [This section is also referred to in *Board of Directors v. Tregea*, 88 Cal. 359.]

The power of a school district, county, or other corporation to impose any tax is only that which is granted by the legislature, and its exercise must be within the limits and in the manner so conferred. *Hughes v. Ewing*, 93 Cal. 418.

*The act of March 20, 1891 [Stats. p. 182] to provide for establishing high schools, is in-*

valid in so far as it authorizes the county superintendent of schools to make the estimate for the tax, leaving the amount of the tax to his discretion and giving no discretion in regard thereto to the supervisors. *McCabe v. Carpenter*, 102 Cal. 469, approving *Hughes v. Ewing*, *supra*.

The foundation of city taxing power is found in section 12, article XI, and the terms "assess" and "collect," include "levying." *City of San Luis Obispo v. Pettit*, 87 Cal. 503.

The fact that a banking corporation, on payment of valuable consideration, procured a license to transact business under act 1878, creating a board of bank commissioners [Stats. p. 740] did not exempt such corporation from payment of a license tax prescribed by an ordinance of the supervisors of the county in which it was transacting its business. The county government act [Stats. 1883, p. 299] authorized the supervisors to adopt such ordinance as to all and every kind of business not prohibited by law. *Mendocino County v. Bank*, 86 Cal. 255.

Following decision in *State v. S. P. R. R. Co.*, 127 U. S. 1. *Held*, a railroad corporation having been invested with certain franchises derived from the government of the United States, in connection with other railroad corporations, by certain acts of congress, and having accepted all the terms and conditions of *said* acts and fully complied therewith, the *state of California* can neither take away, *destroy* nor abridge such franchises by over-

ous burdens. The supervisors of a county cannot levy or collect, for municipal purposes, a license tax upon such railroad for the privilege of conducting its business within the county. The power to tax includes the power to destroy by means of taxation, and no agency of the state can exercise such power as against a privilege granted by the United States. *San Benito County v. S. P. R. R. Co.*, 77 Cal. 518. In effect overruling *C. P. R. R. Co. v. State Board of Equalization*, 60 Cal. 35; *Los Angeles v. S. P. R. R. Co.*, 61 Cal. 59, and *Santa Clara County v. S. P. R. R. Co.*, 66 Cal. 642, concerning license taxes charged by municipal governments against railroad and transportation companies.

The power of a municipal corporation to levy taxes extends to all the territory embraced within its limits, though all of said lands were not embraced within the lands patented to the city. *City of San Diego v. Grannis*, 77 Cal. 511.

The act of March 3, 1885 [Stats. p. 13], imposing a license tax upon foreign insurance companies doing business in this state, to be paid into the treasury of the county, or city and county, and constitute a fireman's relief fund, subject to regulations of the supervisors, is an attempt to impose taxes for municipal purposes, and is void. *City and County of San Francisco v. L. & L. & G. Ins. Co.*, 74 Cal. 113.

*The act of March 23, 1876 [Stats. p. 433], providing for the widening of Dupont street,*

in San Francisco, is not an attempt by the state to exercise the power of assessment for local improvements in a municipality. *Lent v. Tillson*, 72 Cal. 404.

An ordinance of the supervisors of Mono county imposing an annual license at the rate of fifty dollars per thousand head of sheep, upon the business of herding, grazing and pasturing sheep in that county, and declaring a violation of the ordinance to be a misdemeanor, held valid. *Ex parte Mirande*, 73 Cal. 265.

There is nothing unreasonable nor unconstitutional in an ordinance of the city of Modesto requiring that no laundry or public wash house, where articles are cleaned or washed for hire, shall be established or carried on except within a certain specified portion of the city. [Following *Ex parte Moynier*, 65 Cal. 33.] *In re Hang Kie*, 69 Cal. 149.

The supervisors of a county have power to impose a license tax upon the business of selling wines and liquors, and provide for its collection by the appointment of a suitable person, such as the tax collector of the county. *In re Lawrence*, 69 Cal. 608.

A municipality may enact an ordinance requiring a license to be procured by every person who, at a fixed place of business, sells any goods, wares or merchandise, and prescribe a penalty for a refusal to comply therewith. *Ex parte Mount*, 66 Cal. 448.

The license tax provided for by section 3360, *Political Code*, prior to the present constitution, was a tax which is prohibited by sec-

tion 12, article XI, and said section of the code became inoperative by reason of section 1, article XXII. The license referred to is for the purpose of conducting the business of selling merchandise at a fixed place of business, and is a tax imposed for county purposes. McKee dissenting. *People v. Martin*, 60 Cal. 153.

There is no conceivable reason why property that has escaped taxation one year should not be compelled to pay the tax it has escaped; and section 3649, Political Code, providing for a double assessment, upon discovery of the escape, is not unconstitutional. *Biddle v. Oaks*, 59 Cal. 94.

The provisions of act of April 23, 1880 [Stats. p. 389], to promote drainage is unconstitutional, among other reasons, because it attempts to authorize a commission to levy local taxes for a private purpose. Such a power could not be conferred upon a municipal corporation. *People v. Parks*, 58 Cal. 624. [Doane v. Weil, *Id.* 334.]

A municipal tax levied upon property which was included by the act of March 13, 1876 [Stats. p. 251], extending the limits of Santa Rosa, is valid, and may be collected, although the lands so embraced and taxed is used for agricultural purposes, and was not necessary for any city purposes when the city limits were extended over it. *City of Santa Rosa v. Coulter*, 58 Cal. 537.

*An assessment made by the city of Los Angeles in the matter of widening a street,*

which assessment was invalid, cannot be validated by an act of the legislature, nor can the legislature, by a direct act, make an assessment within an incorporated city. *Schumacher v. Toberman*, 56 Cal. 508.

By act of March 6, 1876 [Stats. p. 140], a special act in relation to swamp land reclamation district No. 118, it was required that the trustees should make up a sworn statement of the cost of the reclamation work, based upon the books and vouchers thereof, and the amount so reported should be assessed upon the lands. *Held*, this was an attempt by the legislature to levy an assessment for purposes of taxation, and was unconstitutional. *People v. Houston*, 54 Cal. 536.

The act of March 19, 1878 [Stats. p. 338], to legalize assessments in San Francisco, was a special law, such as was then authorized, and an assessment upon the capital, or capital stock of the corporation, in accordance with said act, is held valid, at least upon demurrer. *San Francisco v. S. V. W. W.*, 54 Cal. 571.

A city ordinance regulating liquor licenses, and a section of the city charter giving a civil action to recover the amount of license from those required by any ordinance to take out a license and pay therefor, are not in conflict with these provisions of the constitution. *City of Sacramento v. Dillman*, 102 Cal. 111.

Whether a school district be regarded as a public corporation, or with reference to this section is to be deemed a part of the county organization, is immaterial. In either view, the

constitution limits the power of the legislature in the matter of imposing taxes upon the inhabitants or property within it. If the legislature cannot impose such tax, it would seem to follow that it cannot prescribe a procedure through which a tax would inevitably result without leaving some discretion in regard to it to the local authorities. *McCabe v. Carpenter*, 102 Cal. 471.

A municipal corporation cannot impose a license tax upon railroads engaged in interstate commerce. *San Bernardino v. S. P. Ry. Co.*, 107 Cal. 526. [See notes under section, 13 article XI, of constitution of 1849, *infra*.]

The provision of the act of March, 1895 [Stats. p. 267], entitled an act to establish fees of county, township and other officers, and of jurors and witnesses, violates this section of the constitution in requiring the tax imposed on estates of deceased persons (one dollar for each additional one thousand dollars in excess of three thousand dollars shown by the inventory and appraisement), and requiring the same to be paid into the county treasury for county purposes. *Fatjo v. Pfister*, 117 Cal. 86.

See notes Sec. 1, Art. I, and Sec. 18, Art. XX.

SECTION 13. The legislature shall not delegate to any special commission, private corporation, company, association, or individual, any power to make, control, appropriate, supervise, or in any way interfere with, any county, city, town, or municipal improvement, money, property, or effects, *whether held in trust or otherwise, or to levy taxes or assessments, or perform any municipal functions whatever.*



A general law authorizing the formation of sanitary districts [Stats. 1891, p. 223], is not in conflict with this section. [Approving, *In re Madera Ir. Dist.*, 92 Cal. 296.] *Woodward v. Fruitvale S. Dist.*, 99 Cal. 554.

The power of municipalities to levy and collect taxes is implied as a necessary attribute. *Security Sav. Bank, etc., v. Hinton*, 97 Cal. 214.

The provisions of the charter of the city of Los Angeles (charter of 1889), directing the council to appoint as depositary of the public moneys such bank as offered highest rate of interest therefor, and directing the city's money to be deposited with such bank, is void. [Sections 16, 17, article XI, constitution.] *Yarnell v. City of L. A.*, 87 Cal. 603.

The act of 1889 [Stats. p. 70], relating to opening, widening, etc., of streets, in providing a commission for assessing value of property taken, and for voluntary conveyance of land taken at such valuation, if the amount thus fixed is satisfactory to the owner, does not vest any municipal powers in the commission. The commissioners act as mere agents, and their proceedings are not binding or effective until acted on and approved by the city council. *Davies v. City of Los Angeles*, 86 Cal. 37.

The act of March 4, 1889 [Stats. p. 56], creating a police relief and pension fund in the several cities and counties of the state, and providing a board to manage the same, does not create a special commission. *Pennie v. Reis*, 80 Cal. 266.

The act of March 15, 1883 [Sec. 1388, Penal Code], providing that the court may commit minors convicted of misdemeanors or felonies to the custody of some non-sectarian charitable school, conducted for the purpose of reclaiming criminal minors, and may direct the payment to such institution of the expenses of such minor by the county in which he has been convicted, does not direct any absolute payment from a county treasury, but has vested in a court, in the exercise of a wise judicial discretion, the right to order such payment to a limited extent, and such provision is not unconstitutional. *Boys' and Girls' Aid Society v. Reis*, 71 Cal. 627.

This provision of the constitution is prospective, and applies only to the legislature created by this constitution. The act of March 25, 1872 [Stats. p. 546], creating a board of commissioners of the funded debt of Sacramento, and providing that the trustees in levying a special tax should be governed by the written request of the commissioners, etc., was not affected by the adoption of this constitution. *Board of Commissioners v. Board of Trustees*, etc., 71 Cal. 310.

The legislature has power to vacate streets in a city, and may delegate such power to the municipality. *Brook v. Horton*, 68 Cal. 554.

The act of April 3, 1876 [Stats. p. 753], providing for the change of grade of portions of Montgomery avenue in San Francisco, authorized the appointment by the county court of a commission to be composed of three disinter-

ested freeholders to assess benefits and damages. *Held*, unnecessary to decide whether or not the provision which empowers the commissioners to report the lots they may find to be benefited, is a grant to them of power to create an assessment district. The act itself is impracticable, as every freeholder in the city is interested in the proceedings, and cannot therefore be disinterested. *Montgomery Ave. case*, 54 Cal. 579.

The act of April 3, 1876 [Stats. p. 918], to regulate the practice of medicine, and conferring certain powers upon the commission to be named by the medical societies, is not unconstitutional. *Ex parte Frazer*, 54 Cal. 94.

A municipal corporation cannot impose a license tax upon a railway company engaged in interstate commerce. *San Bernardino v. S. P. Ry. Co.*, 107 Cal. 526. See notes under section 13, article XI, constitution of 1849, *infra*, as to passenger tax, foreign miners' license, etc.

Subdivision 41 of section 25 of the county government act of 1893 [Stats. p. 359], authorizing boards of supervisors to grant licenses and franchises for taking tolls, is not in violation of section 13 of article XI of the constitution. [Distinguishing *Blood v. Woods*, 95 Cal. 78.] *Blood v. McCarthy*, 112 Cal. 564.

On the reasoning and authority of *Yarnell v. City of Los Angeles*, 87 Cal. 603, it is decided that a provision in a bond of the city requiring semi-annual interest to be paid at a bank in

New York City is unconstitutional. City of L. A. v. Teed, 112 Cal. 323.

SECTION 14. No state office shall be continued or created in any county, city, town, or other municipality, for the inspection, measurement, or graduation of any merchandise, manufacture, or commodity; but such county, city, town, or municipal ity may, when authorized by general law, appoint such officers.


The office of gas inspector created by sections 343, 368, 369, 577 *et seq.*, Political Code, was abolished by this section of the constitution. Conduct v. Police Court, 59 Cal. 278.

The section is referred to in People v. Hoge, 55 Cal. 618, and People v. McFadden, 65 Cal. 445, in construing generally the provisions of article XI.

SECTION 15. Private property shall not be taken or sold for the payment of the corporate debt of any political or municipal corporation.

SECTION 16. All moneys, assessments, and taxes belonging to or collected for the use of any county, city, town, or other public or municipal corporation, coming into the hands of any officer thereof, shall immediately be deposited with the treasurer, or other legal depositary, to the credit of such city, town, or other corporation respectively, for the benefit of the funds to which they respectively belong.

The provisions of the charter of the city of Los Angeles [charter 1889, Sec. 44], directing the moneys of the city to be deposited with such bank as will pay the highest rate of interest thereon and making such bank instead of the treasurer the depository of the city



moneys, are void [citing sections 6, 8, 13, 17, article XI, constitution, and sections 424, 426 Penal Code]. *Yarnell v. City L. A.*, 87 Cal. 603.

That there may be other public corporations than cities and towns, see *In re Madera Ir.* Dist. 92 Cal. 319.

The amendment of county government act [Stats. 1889, page 232] providing that money collected for license taxes, under ordinance of supervisors, within incorporated cities or towns, in counties of twenty-seventh class, shall be paid into the treasury of such city or town is unconstitutional, and that the same must be paid to the county treasurer. Besides, being applicable only to counties of one class, it is local and special legislation. *County of San Luis Obispo v. Graves*, 84 Cal. 71.

The act of March 17, 1876 [Stats. p. 325], requiring money collected by the police judge's court of San Francisco for drunkenness, to be paid to the home for care of Inebriates, was not repealed by act of March 5, 1889 [Stats. p. 62], reorganizing the police court and repealing all inconsistent acts. *Home for Inebriates v. Reis*, 95 Cal. 142.

Fees collected by county clerk from litigants should be paid into the county treasury to the extent of fees earned [where the office was *salaried*], and the unearned portion of *deposits* belong to the depositors. No part of *such funds* were required to be turned over to

a successor in office. *People v. Hamilton*, 103 Cal. 495.

This provision relates only to those officers who rightfully or officially receive money for the county. It is no part of the duty of the auditor to receive moneys from the license tax collector, and if he does so and fails to account therefor to the treasurer, his bondsmen are not made liable under an official bond conditioned for the faithful performance of "all official duties required of him by law." *San Luis Obispo v. Farnum*, 108 Cal. 564.

In an action on the bond of a city treasurer to recover money lost, it is a legitimate defense that the loss occurred by robbery—that the money was taken from the treasurer by irresistible force and violence. *City of Healdsburg v. Mulligan*, 113 Cal. 205.

A city and county treasurer cannot be required to retain money paid "under protest" on the part of the person paying the same on a street assessment, to await an action against the city to recover the same on the ground of the illegality of the assessment; nor is he individually liable for having immediately paid the same into the treasury. *Phelan v. San Francisco*, 120 Cal. 5.

SECTION 17. The making of profit out of county, city, town or other public money, or using the same for any purpose not authorized by law, by any officer having the possession or control thereof, shall be a felony, and shall be prosecuted and punished as prescribed by law.

*The provisions of the charter of the city of*

Los Angeles requiring the funds of the city to be deposited with the bank that will pay the highest interest thereon, and making such bank the depository of the city, are in violation of the general law contained in sections 242, 246, Penal Code, and in violation of sections 6, 8, 13, 16, 17, article XI, and section 26, article IV of the constitution. *Yarnell v. City of Los Angeles*, 87 Cal. 603.

Referred to in *Security Savings Bank, etc. v. Hinton*, 97 Cal. 219, to the effect that the power of taxation is assumed by sections 13 to 18 of this article to exist in favor of municipalities, however chartered, and is referred to in *City of Healdsburg v. Mulligan*, 113 Cal. 205.

SECTION 18. No county, city, town, township, board of education, or school district shall incur any indebtedness or liability, in any manner, or for any purpose, exceeding in any year the income and revenue provided for it for such year without the assent of two-thirds of the qualified electors thereof, voting at an election to be held for that purpose, nor unless, before or at the time of incurring such indebtedness, provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also provision to constitute a sinking fund for the payment of the principal thereof on or before maturity, which shall not exceed forty years from the time of contracting the same. Any indebtedness or liability incurred contrary to this provision shall be void. [Ratification declared Dec. 30, 1892.]

*[An amendment to this section was voted on at the general election November 8, 1898.]*

## [ORIGINAL SECTION.]

SECTION 18. No county, city, town, township, board of education, or school district, shall incur any indebtedness or liability in any manner or for any purpose, exceeding in any year the income and revenue provided for it for such year, without the assent of two-thirds of the qualified electors thereof voting at an election to be held for that purpose, nor unless, before or at the time of incurring such indebtedness, provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within twenty years from the time of contracting the same. Any indebtedness or liability incurred contrary to this provision shall be void.

The act of March 18, 1889 [Stats. p. 14], authorizing cities to issue bonds for public buildings, is a general law, and the city council of Oakland may issue bonds to erect school buildings although its charter vests the government of the school department in a board of education and authorizes the board to build school houses, but does not authorize it (the board) to contract debts, exceeding in any one year the revenue provided for that year. *Wetmore v. City of Oakland*, 99 Cal. 146.

The salary of the registrar of voters for San Francisco was fixed by an act of the legislature, and is not an indebtedness created by the city and need not necessarily be paid from revenue of any particular year. *Lewis v. Widber*, 99 Cal. 412.

The power of taxation is a necessary attribute of municipalities. *Security Savings Bank, etc. v. Hinton*, 97 Cal. 214.



Irrigation districts are to be treated as a class of municipal corporations, but such corporations are not of the class or character enumerated in this section of the constitution, and the legislature in creating them is not controlled by the restrictions of this section. It is not required that assessments levied in the form of taxes, in irrigation districts, should be authorized by a vote of two-thirds of the qualified electors, nor that their indebtedness of any year shall be paid from the revenue of that year. Bonds running for a number of years may be lawfully issued under the Wright act, *In re* bonds of Madera Irrigation District, 92 Cal. 296. Same case on rehearing, *Id.* p. 341.

Section 77 of the county government act providing that claims against the county must be paid according to priority of presentment, must be construed as applying to bonds of any given year. The income and revenue of a county for a given year must first be applied to the payment of indebtedness incurred during that year, before payment of any indebtedness incurred during a preceding year can be paid therefrom. *Shaw v. Statler*, 74 Cal. 258.

The constitution does not prohibit the auditor of the city and county of San Francisco from auditing the demands for salaries of deputy county clerks, notwithstanding the aggregate amount of the salaries for a given year would exceed the amount limited by the

supervisors for the payment of such salaries for that year. *Welch v. Strother*, 74 Cal. 413.

A county indebtedness incurred in any given fiscal year cannot be paid out of the revenue or income of any future year. [*S. F. Gas Co. v. Brickwedel*, 62 Cal. 641, *infra*. Sec. 36 Co. Gov. Act 1883, Stats. p. 311.] *Schwartz v. Wilson*, 75 Cal. 502.

On the authority *San Francisco v. Brickwedel*, 62 Cal. 641, *Held*, that a claim for goods sold a county, charged against the fund of a road district, and in which there was sufficient money to pay the claim, cannot afterwards be ordered paid out of the general county fund of a subsequent year, without a showing that it was to be paid out of revenue provided for the same year in which the indebtedness was contracted. *Schwartz v. Wilson*, 75 Cal. 502.

Mandamus will not issue to the auditor of San Francisco, directing him to audit bills for gas, when the revenue for the year in which the indebtedness was incurred has been exhausted, and where the claimant is also indebted to the city for taxes in an amount greater than the claim presented. *S. F. Gas Co. v. Brickwedel*, 62 Cal. 641.

Referred to in *Mayrhofer v. Board of Education*, 89 Cal. 110, where it is said that under this section as amended, one who furnishes material for the state knows to what he must look for *payment*, and that a debt contracted *beyond the revenue for the year cannot be collected, nor can a lien be had upon a pub-*

lic (school) building. Which case is in turn cited in *Bates v. Santa Barbara County*, 90 Cal. 546, and in *Skelly v. School Board*, 103 Cal. 655.

For case illustrating attempt to evade the provision requiring the indebtedness of each year to be paid from the revenues of that year see *McGowan v. Ford*, 107 Cal. 181-184. And that the provision may work hardship in some instances is no reason for the court ignoring the same. See *Smith v. Broderick*, 107 Cal. 648.

The two-thirds majority provided for means two-thirds of those voting upon the proposition, and where the question of incurring the indebtedness is voted upon at the same time and place of a general election, the two-thirds provision does not refer to the whole number of votes cast at such general election.

*Howland v. Supervisors*, 109 Cal. 153. In the same case it is held that this section does not require that a tax should be levied at the time of issuing the bonds, but only that provision must be made insuring the collection of an annual tax sufficient to pay the interest as it falls due and to create a sinking fund.

Injunction will lie to restrain the supervisors, auditor and treasurer of San Francisco from incurring any indebtedness or expenses in excess of the revenue provided for the fiscal year, and to enjoin the levying of any tax or making any provision for the paying of the deficiency arising therefrom out of the funds provided for the ensuing fiscal year. *Bradford*

*v. City and County of San Francisco*, 112 Cal. 538.

The prohibition against creating indebtedness in excess of the revenue of the current year has no application to the refunding of municipal indebtedness. Refunding only changes the form of the evidence of indebtedness. Sections 4445 to 4449 of the Political Code related only to indebtedness incurred prior to the adoption of the present constitution, and the assent of electors was not required to the proceeding of refunding. As to indebtedness created since the constitution the question of refunding must be submitted to vote, and the constitution itself is sufficient, without legislation, to authorize the calling of an election. *City of Los Angeles v. Teed*, 112 Cal. 323.

As to the validity of funding acts generally, see *Hunsaker v. Borden*, 5 Cal. 288; *Sharp v. Contra Costa Co.*, 34 Cal. 290; *Rose v. Estudillo*, 39 Cal. 270; *People v. Morse*, 43 Cal. 534; *Bates v. Gregory*, 89 Cal. 387; and as to forming a contract, *Bates v. Porter*, 74 Cal. 224.

A contract by a municipality for the care and disposition of its sewage for a period of five years, for a given sum per year, payable in quarterly installments, does not create an immediate liability for the payment of a sum in excess of the revenue of the year in which the contract is entered into. *McBean v. City of Fresno*, 112 Cal. 161.

*The same is held with reference to a contract by a county for the construction of build-*

ings, where the revenue of each year is sufficient to meet the installments and other obligations of the county for each year respectively. *Smilie v. Fresno County*, 112 Cal. 312.

A contract by the city of Fresno to pay for the construction of a sewer from the city to the county farm, in quarterly installments and extending over a period of five years, was held not violative of this section, upon the theory that no immediate indebtedness was created by such contract for the deferred payments, and that the contractor took the risk that the revenue of each year would be sufficient to meet the payments to fall due under the contract for such year. *McBean v. City of Fresno*, 113 Cal. 161.

A claim arising under a contract for burying the indigent dead for the fiscal year cannot be paid out of the revenue or income of the succeeding year except upon a vote of the people for that purpose. *Pacific Undertakers v. Widber*, 113 Cal. 201.

Where the fund provided for feeding prisoners in San Francisco is exhausted before the commencement of another year, a demand arising from contract for feeding them cannot be paid from some other fund of the city; and reducing the demand to a judgment does not increase the dignity of the demand; and mandamus does not lie to compel the supervisors to pay such judgment. [Citing and approving *Lewis v. Widber*, 99 Cal. 412; *Smith v. Broderick*, 107 Cal. 644; *Pacific Undertakers*

*v. Widber*, 113 Cal. 201.] *Goldsmith v. San Francisco*, 115 Cal. 37.

A city may contract *in futuro* with reference to a water supply, involving the payment of moneys annually during a long period of time, without violating this provision of the constitution. [*McBean v. Fresno*, 112 Cal. 159, approved.] *Higgins v. San Diego Water Co.*, 118 Cal. 527-530.

See as to services claimed to be extraordinary and which the municipal authorities might reasonably have failed to be able to foresee. *Buck v. City of Eureka*, 119 Cal. 45.

It is not necessary that the voters should determine in the first instance whether the interest on bonds to be issued should be paid annually or semi-annually. *Murphy v. City of San Luis Obispo*, 119 Cal. 634.

That each year's income must pay each year's indebtedness, see *Montague v. English*, 119 Cal. 225.

SECTION 19. In any city where there are no public works owned and controlled by the municipality for supplying the same with water or artificial light, any individual, or any company duly incorporated for such purpose, under and by authority of the laws of this state, shall, under the direction of the superintendent of streets, or other officer in control thereof and under such general regulations as the municipality may prescribe, for damages and indemnity for damages, have the privilege of using the public streets and thoroughfares thereof and of laying down pipes and conduits therein, and connections therewith, so far as may be necessary for introducing into and supplying such city and its inhabitants either with gaslight, or other illuminating light, or with fresh water for

domestic and all other purposes, upon the condition that the municipal government shall have the right to regulate the charges thereof. [Ratification declared Feb. 12, 1885.]

[ORIGINAL SECTION.]

SECTION 19. No public work or improvement of any description whatsoever shall be done or made, in any city, in, upon or about the streets thereof, or otherwise, the cost and expense of which is made chargeable or may be assessed upon private property by special assessment, unless an estimate of such cost and expense shall be made, and an assessment, in proportion to benefits, on the property to be affected or benefitted, shall be levied, collected, and paid into the city treasury before such work or improvement shall be commenced, or any contract for letting or doing the same authorized or performed. In any city where there are no public works owned and controlled by the municipality, for supplying the same with water or artificial light, any individual, or any company duly incorporated for such purpose under and by authority of the laws of this state, shall, under the direction of the superintendent of streets, or other officer in control thereof, and under such general regulations as the municipality may prescribe for damages and indemnity for damages, have the privilege of using the public streets and thoroughfares thereof, and of laying down pipes and conduits therein, and connections therewith, so far as may be necessary for introducing into and supplying such city and its inhabitants either with gaslight or other illuminating light, or with fresh water for domestic and all other purposes, upon the condition that the municipal government shall have the right to regulate the charges thereof.

Contracts for street improvements, entered *into before* this constitution took effect, were *not affected* by the provisions of this section. *So held* with reference to contracts under the

San Francisco street law, in *Ede v. Knight*, 93 Cal. 159, and *Ede v. Cogswell*, 79 Cal. 278; and as to Oakland street law, in *Oakland Pav. Co. v. Barstow*, 79 Cal. 45.

The initial proceedings for widening Mission street in San Francisco appear to have conformed to the original section before the amendment of 1885. *City and County of S. F. v. Kiernan*, 98 Cal. 614. [See note under Sec. 14, Art. I.]

The act of 1872, relating to street improvements in San Francisco, and being part of the consolidation acts, did not require the assessment and payment into the treasury of the cost of the work before the work was done or a contract let therefor. The act of March 6, 1883 [Stats. p. 32], conformed to the provisions of the constitution of 1879, requiring such assessment and payment into the treasury before doing the work or letting the contract, and being a general law, it superseded the act of 1872. This section of the constitution being amended in 1884 by omitting said provision, the legislature, in conformity with the amendment, passed the act of March 18, 1885. [Stats. p. 147.] By the 36th section of this act [Stats. p. 165] the act of 1883 was repealed except as to work commenced under it prior to said act of 1885. The amendment of the constitution having been effected prior to the passage of the act of 1885, removed the objection as to the constitutionality of the latter act, and it is now in force in San Francisco as a general law. *Oakland Pav. Co. v.*



Tompkins, 72 Cal. 5 [cited in *Thomason v. Ashworth*, 73 Cal. 73; *McKinstry, J.*, dissenting]. Upon same questions see divers concurring and dissenting opinions in *Thomason v. Ruggles*, 69 Cal. 465; also the divers opinions in *Oakland Pav. Co. v. Hilton*, 69 Cal. 479; *Donahue v. Graham*, 61 Cal. 276; *McDonald v. Patterson*, 54 Cal. 248. In the latter case it was held that the section as originally adopted was self-executing and repealed the act of 1872, relating to San Francisco.

Section 19, article XI; section 1, article XIV, and section 2, article XIV, must be taken and read together, and effect given to each of them. The use of water appropriated for sale, rental or distribution is a public use, and it is not left for the legislature to say so, but the use is subject to regulation by the legislature, and the rates of compensation therefor shall be fixed in a certain specified manner, and the body failing to do so is expressly made subject to peremptory process to compel action at the suit of any person interested, and liable to such further process and penalties as the legislature may prescribe. The right to collect the rates so established is a franchise.

Prior to constitution of 1879 the right of laying pipes in the streets of incorporated cities lay only in grant from the legislature. The provisions of section 19, article XI, includes towns. *People v. Stephens*, 62 Cal. 209. Affirmed in *Town of Woodland v. Stephens*, 62 Cal. 238.

The section is referred to in the following cases: That it is limited to a city. *In re Madera Ir. Dist.*, 92 Cal. 342; *People v. McFadden*, 81 Cal. 497. That it includes towns as to laying pipes and fixing water rates. *People v. Stephens*, 62 Cal. 236. That this right to lay pipes is a franchise subject to be taxed. *Spring Valley W. W. v. Schottler*, 62 Cal. 108; and *San José Gas Co. v. January*, 57 Cal. 616. That under this provision the S. V. W. W. were placed upon the same footing as any other individual or corporation, and that rates are to be fixed for the water supplied by it to the city of San Francisco, and it is not required to supply free water. *Spring Valley W. W. Co. v. San Francisco*, 61 Cal. 24; that the original section was self-executing. [Citing *McDonald v. Patterson*, *supra*.] *Ewing v. Oroville M. Co.*, 56 Cal. 649.

The question is suggested that this section applies only to cities that own no public water works. *San Diego W. Co. v. San Diego*, 118 Cal. 118.

## ARTICLE XII.

### CORPORATIONS.

SECTION 1. Corporations may be formed under general laws, but shall not be created by special act. All laws now in force in this state concerning corporations, and all laws that may be hereafter passed pursuant to this section may be altered from time to time or repealed.

*Const. 1849, Art. IV, Sec. 31. And see notes thereunder.*

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The act of April 3, 1876 [Stats. p. 918], to regulate the practice of medicine, is not unconstitutional. [Decided on authority of *Ex parte Frazer*, 54 Cal. 94.] *Ex parte Johnson*, 62 Cal. 263.

This court will follow the decisions of former Supreme Court upon questions involving the former constitution. *Davis v. Superior Court*, 63 Cal. 581; *Stande v. Election Commissioners*, 61 Cal. 313. [The former constitution, section 31, article IV, provided that corporations may be formed under general laws, but shall not be created by special act except for municipal purposes.]

It is considered mandatory that corporations must be formed under general laws, but it has never been construed that all private corporations must be formed under the same general law, or be limited to the exercise of the same powers. Legislation has been adapted to the character of the corporation to be organized. *In re Madera Irrigation District*, 92 Cal. 316.

Under section 31, article IV, of former constitution it is said that the first clause of this section relates to the formation of corporations and to powers directly conferred upon them by the legislature, but it does not prohibit a duly organized corporation from taking by assignment, a franchise that had been granted to an individual. *People v. Stanford*, 77 Cal. 371.

Section 3670 Political Code, authorizing a complaint against a railroad company, differ-

ent from that required by general rules of pleading prescribed in Code of Civil Procedure is void. *People v. C. P. R. R. Co.*, 83 Cal. 393, 413.

The framers of the constitution have carefully guarded against special legislation. *Thomason v. Ashworth*, 73 Cal. 77.

The constitution does not confer the franchise of collecting water rates, but leaves the power of granting such privilege to the legislature by general laws, and a general law granting such franchise which should require water to be furnished free for extinguishing fires is prohibited. *Spring Valley W. W. v. San Francisco*, 61 Cal. 38.

Under the constitution of 1849, and that of 1879, the legislature may by general laws provide for the organization of corporations, and may repeal or amend and change such laws at will, and when an individual becomes a stockholder in a corporation he impliedly assents to the right of the legislature to alter or amend the law. It is competent for the legislature under this reserved power to provide for the consolidation of corporations by a majority vote of the stockholders.

*Market St. R'y Co. v. Hellman*, 109 Cal. 584. This case is distinguished in *Murphy v. Pacific Bank*, 119 Cal. 342.

SECTION 2. Dues from corporations shall be secured by such individual liability of the corporations and other means as may be prescribed by law.

*Const. 1849, Art. IV, Sec. 32.*

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Sections 2, 3, article XII, have no relation to a case where the liability of the stockholder accrued before the adoption of this constitution. Sections 32, 36, article IV, of former constitution were substantially the same as 2 and 3 of this article, but neither these sections nor section 322 Civil Code prevent a court of equity from compelling a stockholder, for the benefit of a creditor of an insolvent corporation, to pay in the amount of capital stock he has contracted to take. The remedies are concurrent. *Harmon v. Page*, 62 Cal. 448, 460.

SECTION 3. Each stockholder of a corporation, or joint-stock association, shall be individually and personally liable for such proportion of all its debts and liabilities contracted or incurred during the time he was a stockholder, as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock, or shares of the corporation or association. The directors or trustees of corporations and joint-stock associations shall be jointly and severally liable to the creditors and stockholders for all moneys embezzled or misappropriated by the officers of such corporation, or joint-stock association, during the term of office of such director or trustee.

Const. 1849, Art. IV, Sec. 36.

The personal liability of the stockholder is an obligation arising on contract within section 537, Code of Civil Procedure, providing for attachment. *Kennedy v. Cal. Sav. Bank*, 97 Cal. 93.

*The constitution only affords an additional remedy without taking away other remedies which existed before. Hiller v. Collins*, 63

Cal. 235. See further opinion on denying rehearing, *Id.* p. 239.

The provisions of this constitution do not apply where the liability of the stockholder arose before its adoption. A court of equity will compel a subscriber of stock to pay in, for the benefit of creditor of insolvent corporation, the amount subscribed by him. Such remedy is concurrent with that provided by the constitution and section 322, Civil Code. *Harmon, v. Page*, 62 Cal. 448, 460.

As to allegations of complaint in action against stockholders, see *Bidwell v. Babcock*, 87 Cal. 29. Also as to pleading, and that the obligation of stockholders to pay their respective proportions of the debts incurred while they were stockholders, is direct and primary. *Faymonville v. McCollough*, 59 Cal. 285.

This section is construed so as to limit its effect to certain kinds of losses to the corporation; that is to say, each officer or trustee is made liable for embezzlement or misappropriation of corporate funds. The word "misappropriation" is construed to mean something like embezzlement of funds intrusted to an officer for a particular purpose, by devoting them to an unauthorized purpose, and not to the mere payment of an extravagant price for services or materials appertaining to the business of the corporation. *Fox v. Hale & Norcross S. M. Co.*, 108 Cal. 426.

*The legislature cannot exempt stockholder from the liability for his proportionate share of the debts and liabilities of a banking cor*

poration, and the act of April 11, 1862 [Stats. p. 199], is unconstitutional in so far as it attempts such exemption. *McGowan v. McDonald*, 111 Cal. 61.

The stockholders in a corporation who are liable to its creditors are those who were stockholders when the liability was incurred. [C. C. section 322; *Bidwell v. Babcock*, 87 Cal. 29.] *Danielson v. Yoakum*, 116 Cal. 383.

SECTION 4. The term "corporations," as used in this article, shall be construed to include all associations and joint-stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships; and all corporations shall have the right to sue and shall be subject to be sued, in all courts, in like cases as natural persons.

Const. 1849, Art. IV, Sec. 33.

The right to sue and be sued, to maintain and defend actions concerning corporate rights and liabilities, is a power incident to every corporation. *Baines v. Babcock*, 95 Cal. 581.

SECTION 5. The legislature shall have no power to pass any act granting any charter for banking purposes, but corporations or associations may be formed for such purposes under general laws. No corporation, association or individual shall issue or put in circulation, as money, anything but the lawful money of the United States.

Const. 1849, Art. IV, Sec. 34.

The section is referred to in *Thomason v. Ashworth*, 73 Cal. 77, as to special legislation.

SECTION 6. All existing charters, grants, franchises, special or exclusive privileges, under which an actual and bona fide organization shall not have

taken place, and business been commenced in good faith, at the time of the adoption of this constitution, shall thereafter have no validity.

SECTION 7. The legislature shall not extend any franchise or charter, nor remit the forfeiture of any franchise or charter of any corporation now existing, or which shall hereafter exist under the laws of this state.

Acts sufficient to cause a forfeiture, do not *per se* produce a forfeiture—the corporation continues to exist until the sovereignty which created it shall by proper proceedings, in a proper court, procure an adjudication of forfeiture, and enforce it. An action was brought to have it determined that a street railway had forfeited, and that it be excluded from all rights, privileges, etc., acquired by it under a municipal ordinance. It was contended, 1st, that there was no law authorizing the granting of a franchise for street railways to be propelled by electricity; and 2d, if defendant had the right to construct such railway, it has forfeited that right by its failure to complete the road within three years. While this cause was on appeal to the Supreme Court the legislature passed an act amending section 497, Civil Code, so as to invest municipal corporations with power to grant franchise for street railways to be propelled by electricity, and also an act providing that ordinances of cities passed prior to said act, giving authority to propel cars upon *tracks laid within cities, etc., by electricity, are confirmed and made valid.* Held, *said acts are valid as not extending a franchise*



nor remitting a forfeiture. As no final adjudication of forfeiture had yet been reached in this case, the act ratifying and confirming the ordinance granting the franchise is not an act remitting a forfeiture; but it is an act waiving a forfeiture, and the state has the right to make such waiver. *People v. L. A. Electric Ry. Co.*, 91 Cal. 339.

SECTION 8. The exercise of the right of eminent domain shall never be so abridged or construed as to prevent the legislature from taking the property and franchises of incorporated companies and subjecting them to public use the same as the property of individuals, and the exercise of the police power of the state shall never be so abridged or construed as to permit corporations to conduct their business in such manner as to infringe the rights of individuals or the general well-being of the state.

SECTION 9. No corporation shall engage in any business other than that expressly authorized in its charter, or the law under which it may have been, or may hereafter be organized; nor shall it hold for a longer period than five years any real estate except such as may be necessary for carrying on its business.

A stockholder is "engaged in the business" of the corporation. A mercantile corporation is not authorized (where its charter declaration does not include such dealings) to deal in stocks or to become a stockholder in other corporations. Acts wholly without the business of the corporation are void. [*Kennedy v. Cal. Sav. Bank*, 101 Cal. 495, distinguished.] *Knowles v. Sandercock*, 107 Cal. 643

SECTION 10. The legislature shall not pass any laws permitting the leasing or alienation of any franchise, so as to relieve the franchise or property held thereunder from the liabilities of the lessor or grantor, lessee or grantee, contracted or incurred in the operation, use or enjoyment of such franchise, or any of its privileges.

This constitutional provision is one peculiar to this state. It is not to be construed as a grant of authority to lease, but as a restriction upon the legislature to make such grant of authority. It is for the purpose of preventing a corporation, by selling or assigning its franchise or property, from saving harmless the franchise or property, and leaving remediless one who but for the sale or lease could have enforced against the property a judgment which he might recover, and it is further designed to preserve the right of the state to a forfeiture of the franchise. *Lee v. S. P. R. R. Co.*, 116 Cal. 101.

SECTION 11. No corporation shall issue stock or bonds, except for money paid, labor done, or property actually received, and all fictitious increase of stock or indebtedness shall be void. The stock and bonded indebtedness of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding the larger amount in value of the stock, at a meeting called for that purpose, giving sixty days' public notice, as may be provided by law.

Bonded indebtedness does not embrace a non-negotiable note and mortgage executed by a private corporation to secure its indebtedness for money loaned, money paid, property purchased, or labor performed in the or-

dinary course of its authorized business, and actually received and used in such business. *Underhill v. Santa Barbara, etc. Co.*, 93 Cal. 308.

Fictitious increase does not mean an increase of the capital stock of a corporation, and the issuing of additional shares to be sold at a price less than the nominal par value, to supply a fund actually required for the use of the corporation. Such an increase under such circumstances is not prohibited. *Stein v. Howard*, 65 Cal. 616.

Section 359 of the Civil Code, at the time of the adoption of the constitution, was inconsistent therewith, and was annulled. The first clause of section 11, article XII, constitution, as to issuing stock except for certain purposes, is prohibitory, and the second clause requires the enactment of a general law, and is not self-executing. [*McDonald v. Patterson*, 54 Cal. 245, distinguished.] *Ewing v. Oroville M. Co.*, 56 Cal. 649.

A promissory note, given in payment of a subscription to stock of a corporation, constitutes the receipt of "property" on which the stock may be issued. *Pacific Trust Co. v. Dorsey*, 72 Cal. 55.

SECTION 12. In all elections for directors or managers of corporations, every stockholder shall have the right to vote, in person or by proxy, the number of shares of stock owned by him for as many persons as there are directors or managers to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock

shall equal, or to distribute them, on the same principle, among as many candidates as he shall think fit; and such directors or managers shall not be elected in any other manner, except that members of co-operative societies formed for agricultural, mercantile and manufacturing purposes, may vote on all questions affecting such societies in manner prescribed by law.

This section is understood to confer upon the individual stockholder entitled to vote at an election the right to cast all the votes which his stock represents, multiplied by the number of directors to be elected, for a single candidate, should he think proper to do so, or, to distribute them among any two or more candidates. A corporation holding an election for directors is bound to follow the constitutional mode, and has no power, by resolution or otherwise, to adopt any other. And all of the directors must be voted for at one time, since to vote for one director only at a time would enable a majority to cumulate their votes each time, and thus elect the entire board. *Wright v. Central Cal. Water Co.*, 67 Cal. 532.

SECTION 13. The state shall not in any manner loan its credit, nor shall it subscribe to, or be interested in the stock of any company, association, or corporation.

Const. 1849, Art XI, Sec. 10.

SECTION 14. Every corporation other than religious, educational or benevolent, organized or doing business in this state, shall have and maintain an office or place in this state for the transaction of its business, where transfers of stock shall be made, and in which shall be kept for inspection

by every person having an interest therein, and legislative committees, books in which shall be recorded the amount of capital stock subscribed, and by whom; the names of the owners of its stock; and the amounts owned by them respectively; the amount of stock paid in, and by whom; the transfers of stock; the amount of its assets and liabilities, and the names and place of residence of its officers.

SECTION 15. No corporation organized outside the limits of this state shall be allowed to transact business within this state on more favorable conditions than are prescribed by law to similar corporations organized under the laws of this state.

The statute of 1876 [Stats. p. 729] requiring bank statements to be filed with county recorder, applies to corporations organized without this state as well as to those organized within it. *Bank British N. A. v. Madison*, 99 Cal. 125. Citing, same *v. Alaska Imp. Co.*, 97 Cal. 28.

The act of 1876 was repealed by act of March 9, 1893. [Stats. p. 112.]

The act of 1880 [Stats. p. 400], requiring mining corporations to post weekly reports of their superintendent, and imposing a fine of one thousand dollars upon the corporation for violation thereof is not subject to the objections that it applies only to domestic corporations [Art. XI, Sec. 15 Const.], nor that it applies only to corporations organized for producing gold and silver from quartz. [Art IV, Sec. 25 Const.] The act is not unconstitutional. *Miles v. Woodward*, 115 Cal. 310.

SECTION 16. A corporation or association may *be sued* in the county where the contract is made *or is to be performed*, or where the obligation or

CORPORATIONS. Art. XII, Secs. 14-16

liability arises, or the breach occurs; or in the county where the principal place of business of such corporation is situated, subject to the power of the court to change the place of trial as in other cases.

Referred to in *McSherry v. P. C. G. M. Co.*, 32 Pac. Rep. 711, and same case, 97 Cal. 637.

A mining company or "association," whether possessed of "corporate" powers or not, may be sued in the county where the alleged injury occurred. *Kendrick v. D. C. C. G. M. Co.*, 94 Cal. 137. "May be sued," makes the section permissive and not mandatory. This construction is necessary to avoid conflict between it and section 5 of article VI. *National Bank v. Superior Court*, 83 Cal. 492.

Defendant was sued in Los Angeles upon a contract made in San Francisco, to be performed outside of the state, by a corporation having its principal place of business in San Francisco and the breach occurred outside of the state. The Superior Court properly ordered the case transferred to San Francisco, on motion of defendant. *Cohn v. C. P. R. R.*, 71 Cal. 488. In so far as the decision approves, *Jenkins v. Cal. Stage Co.*, Myrick J., dissents.

An action for damages inflicted by a railroad may be brought in the county where the injury was inflicted. and defendant is not entitled to have the cause removed to the county where it has its principal place of business. The section is applicable to torts, and is not confined to contract. It is not in conflict with the fourteenth amendment to U.S. constitution. *Lewis v. S. P. C. R. R.*, 66 Cal. 209.

The place of residence of a corporation is the county where its principal place of business is situated, and that is the proper place to commence action against it for an accounting, and to recover shares of stock alleged to have been illegally sold for assessment, etc. *McSherry v. Penn. C. G. M. Co.*, 97 Cal. 637.

There is no law defining the residence of a corporation. Its principal place of business is not its "residence," within the meaning of section 395, Code of Civil Procedure. *Cal. S. R. Co. v. S. P. R. R. Co.*, 65 Cal. 394.

Section 395, Code of Civil Procedure, giving defendant a right to change the place of trial to the county of his residence, does not apply in the same manner to corporations. There is no absolute right of a corporation when sued in one of the counties specified in the constitution, to have the cause removed to the county where it has its principal place of business. *Trezevant v. W. R. Strong Co.*, 36 Pac. Rep. 395.

The section relates to private corporations and not to public municipal corporations. Municipal corporations occupy a position as favorable as that of private corporations, although the former cannot be said to have any residence. *Buck v. City of Eureka*, 97 Cal. 135.

An insurance company of this state may be sued in the county where the contract of insurance was completed, and is not entitled to *change of place of trial to county where it has its principal place of business*, although the

policy may have been issued from the latter. *Yore v. Bankers' Association*, 88 Cal. 609. Same as to railroad company. *Chase v. R. R. Co.*, 83 Cal. 469. As to mortgage, the action must be brought in county where the property is situate. *Baker v. Fireman's Fund Ins. Co.*, 73 Cal. 182.

The contract referred to in this section gives a plaintiff the right not only to bring his action, but also to have the trial in either of the counties referred to in this section, subject to a right in defendant to have the place of trial changed for some other reason than that of its residence. *Trezevant v. Strong Co.*, 102 Cal. 49.

But see also, as to individual stockholders, *Bailey v. Cox*, 102 Cal. 333.

Where the verified complaint in an action against a corporation alleged a contract with the corporation, made and payable in the county in which the action is brought, and affidavits in conflict with the complaint were presented by defendant on motion for change of place of trial, and also affidavits in support of the facts stated in the complaint, an order denying the motion will not be disturbed. *Bowers v. Modoc Land, etc., Co.*, 117 Cal. 52.

As to right to change of place of trial in actions against corporations, see *Brady v. Times-Mirror Co.*, 106 Cal. 56, and *The G. & S. Co. v. The M. & H. F. C. Co.*, 107 Cal. 379.

The question is left undecided whether, *when it appears from the complaint that a cause has been properly brought in the county*



where the obligation arose, the court would, in any case, be authorized upon affidavits offered by defendant controverting the complaint, to direct a change of the place of trial. *Lake-shore C. Co. v. Modoc L. & L. Co.*, 108 Cal. 262.

Where a corporation has an agency in the county where land is situated, and a contract affecting the land is signed by plaintiff in that county, and is then forwarded to another county where the corporation has its principal place of business, for the signature of the proper officers of the corporation, and is then returned to the agent in the county where the land is situated for delivery, the contract is held to be executed in the latter county, since delivery is part of and the last act in its execution, and said latter county is the proper one for trial of an action for breach of the contract. *Ivey v. Kern County Land Co.*, 115 Cal. 198.

SECTION 17. All railroad, canal, and other transportation companies are declared to be common carriers, and subject to legislative control. Any association or corporation, organized for the purpose, under the laws of this state, shall have the right to connect at the state line with railroads of other states. Every railroad company shall have the right with its road to intersect, connect with or cross any other railroad, and shall receive and transport each the other's passengers, tonnage and cars, without delay or discrimination.

SECTION 18. No president, director, officer, agent, or employé of any railroad or canal company shall be interested, directly or indirectly, in the furnishing of material or supplies to such company, nor in the business of transportation as a common carrier

of freight or passengers over the works owned, leased, controlled, or worked by such company, except such interest in the business of transportation as lawfully flows from the ownership of stock therein.

SECTION 19. No railroad or other transportation company shall grant free passes, or passes or tickets at a discount, to any person holding any office of honor, trust, or profit in this state; and the acceptance of any such pass or ticket, by a member of the legislature or any public officer, other than railroad commissioner, shall work a forfeiture of his office.

In an action in the nature of *quo warranto* against the incumbent of an office who is charged with the acceptance of a free railroad pass, an oral plea of not guilty does not raise an issue. The proceeding is not in the nature of a criminal prosecution. [Dissenting opinion of Harrison, J.] But where such plea is accepted by the Superior Court, and the proceeding is treated as a criminal one, mandamus will not lie to compel the court to give judgment of ouster on motion for judgment on the pleadings. *People v. Superior Court S. F.*, 114 Cal. 469-476.

SECTION 20. No railroad company or other common carrier shall combine or make any contract with the owners of any vessel that leaves port or makes port in this state, or with any common carrier, by which combination or contract the earnings of one doing the carrying are to be shared by the other not doing the carrying. And whenever a railroad corporation shall, for the purpose of competing with any other common carrier, lower its rates for transportation of passengers or freight from one point to another, such reduced rates shall

not be again raised or increased from such standard without the consent of the governmental authority in which shall be vested the power to regulate fares and freights.

SECTION 21. No discrimination in charges or facilities for transportation shall be made by any railroad or other transportation company between places or persons, or in the facilities for the transportation of the same classes of freight or passengers within this state, or coming from or going to any other state. Persons and property transported over any railroad, or by any other transportation company or individual, shall be delivered at any station, landing or port, at charges not exceeding the charges for the transportation of persons and property of the same class, in the same direction, to any more distant station, port, or landing. Excursion and commutation tickets may be issued at special rates.

SECTION 22. The state shall be divided into three districts as nearly equal in population as practicable, in each of which one railroad commissioner shall be elected by the qualified electors thereof at the regular gubernatorial elections, whose salary shall be fixed by law, and whose term of office shall be four years, commencing on the first Monday after the first day of January next succeeding their election. Said commissioners shall be qualified electors of this state and of the district from which they are elected, and shall not be interested in any railroad corporation, or other transportation company, as stockholder, creditor, agent, attorney or employé; and the act of a majority of said commissioners shall be deemed the act of said commission. Said commissioners shall have the power, and it shall be their duty, to establish rates of charges for the transportation of passengers and freight by railroad or other transportation companies, and publish the same from time to time, with such changes as they may make; to examine the books, records and papers of all railroad and

other transportation companies, and for this purpose they shall have power to issue subpoenas and all other necessary process; to hear and determine complaints against railroad and other transportation companies, to send for persons and papers, to administer oaths, take testimony, and punish for contempt of their orders and processes, in the same manner and to the same extent as courts of record, and enforce their decisions and correct abuses through the medium of the courts. Said commissioners shall prescribe a uniform system of accounts to be kept by all such corporations and companies. Any railroad corporation or transportation company which shall fail or refuse to conform to such rates as shall be established by such commissioners, or shall charge rates in excess thereof, or shall fail to keep their accounts in accordance with the system prescribed by the commission, shall be fined not exceeding twenty thousand dollars for each offense, and every officer, agent or employé of any such corporation or company who shall demand or receive rates in excess thereof, or who shall in any manner violate the provisions of this section, shall be fined not exceeding five thousand dollars, or be imprisoned in the county jail not exceeding one year. In all controversies, civil or criminal, the rates of fares and freights established by said commission shall be deemed conclusively just and reasonable, and in any action against such corporation or company for damages sustained by charging excessive rates, the plaintiff, in addition to the actual damage, may, in the discretion of the judge or jury, recover exemplary damages. Said commission shall report to the governor, annually, their proceedings and such other facts as may be deemed important. Nothing in this section shall prevent individuals from maintaining actions against any of such companies. The legislature may, in addition to any penalties herein prescribed, enforce this article by forfeiture of charter or *otherwise, and may confer such further powers on the commissioners as shall be necessary to enable*

them to perform the duties enjoined on them in this and the foregoing section. The legislature shall have power, by a two-thirds vote of all the members elected to each house, to remove any one or more of said commissioners from office for dereliction of duty, or corruption, or incompetency: and whenever, from any cause, a vacancy in office shall occur in said commission, the governor shall fill the same by the appointment of a qualified person thereto, who shall hold office for the residue of the unexpired term, and until his successor shall have been elected and qualified.

The powers of the commission for the control of railroad corporations and transportation companies should be construed to extend the supervision of the commission to all persons engaged in transportation, whether as corporations, joint-stock companies, partnerships or individuals, and it is so construed by legislative enactments. [Act creating railroad commission. Stats. 1880, pp. 45, 48, Sec. 14.] *Moran v. Ross*, 79 Cal. 159.

The term of office of the commissioners commences on the same day as that of the governor. *Barton v. Kalloch*, 56 Cal. 102.

The section is referred to in *Robinson v. Southern Pacific Co.*, 105 Cal. 544, in connection with the contention that sections 489, 490, of Civil Code, relating to stop-over tickets, were repealed, but the question of repeal is not decided, being only conceded for purposes of the case.

The section is referred to in the slander case of *Rea v. Wood*, 105 Cal. 320.

SECTION 23. Until the legislature shall district the state the following shall be the railroad districts: The first district shall be composed of the counties of Alpine, Amador, Butte, Calaveras, Colusa, Del Norte, El Dorado, Humboldt, Lake, Lassen, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo and Yuba, from which one railroad commissioner shall be elected. The second district shall be composed of the counties of Marin, San Francisco and San Mateo, from which one railroad commissioner shall be elected. The third district shall be composed of the counties of Alameda, Contra Costa, Fresno, Inyo, Kern, Los Angeles, Mariposa, Merced, Mono, Monterey, San Benito, San Bernardino, San Diego, San Joaquin, San Luis Obispo, Santa Barbara, Santa Clara, Santa Cruz, Stanislaus, Tulare, Tuolumne and Ventura, from which one railroad commissioner shall be elected.

SECTION 24. The legislature shall pass all laws necessary for the enforcement of the provisions of this article.

The act of April 23, 1880 [Stats. p. 400], requiring directors of mining corporations to post monthly statements of the receipts, expenditures and liabilities of the corporation is not unconstitutional. *Hewlett v. Epstein*, 63 Cal. 184.

## ARTICLE XIII.

### REVENUE AND TAXATION.

SECTION 1. All property in the state, not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law. The word "property," as *used in this article and section*, is hereby declared *to include moneys, credits, bonds, stocks, dues, franchises, and all other matters and things real*

*revised*  
personal and mixed, capable of private ownership; provided, that property used for free public libraries and free museums, growing crops, property used exclusively for public schools and such as may belong to the United States, this state or to any county or municipal corporation within this state, shall be exempt from taxation. The legislature may provide, except in case of credits secured by mortgage or trust deed, for a deduction from credits of debts due to *bona fide* residents of this state. [Amendment ratified at election Nov. 6, 1894.]

[ORIGINAL SECTION.]

SECTION 1. All property in the state, not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law. The word "property," as used in this article and section, is hereby declared to include moneys, credits, bonds, stocks, dues, franchises, and all other matters and things, real, personal and mixed, capable of private ownership; provided that growing crops, property used exclusively for public schools, and such as may belong to the United States, this state, or to any county or municipal corporation within this state, shall be exempt from taxation. The legislature may provide, except in the case of credits secured by mortgage or trust deed, for a reduction from credits or debts due to *bona fide* residents of this state.

Const. 1849, Art. XI, Sec. 14.

Fruit trees are not growing crops, and are subject to taxation. *Cottle v. Spitzer*, 65 Cal. 456.

The words "all other matters and things, real, personal and mixed, capable of private ownership," do not qualify the word franchise. *Said words* show clearly that they were intended to add something to what preceded them—to refer to kinds of property not pre-

viously mentioned—not to qualify anything, and franchises are property subject to taxation. *Spr. V. W. W. v. Schottler*, 62 Cal. 71, and *S. F. Gas Co. v. Schottler*, *Id.* 119.

Where the capital stock of a corporation divided into shares was owned by others and not by the corporation itself, prior to 1879, the corporation could not be assessed therefor, but could be assessed only for the property "owned, claimed by, or in its possession or under its control." *San Francisco v. S. V. W. W.*, 63 Cal. 524, following decisions of former Supreme Court.

Section 3640 of Political Code as it stood in 1880, providing for the assessment of shares of national bank stock was discriminating and unconstitutional in not allowing deductions for credits. Such stock is not a credit secured by mortgage or deed of trust. *Miller v. Heilbron*, 58 Cal. 133. Sec. 3640 was repealed March 7, 1881.

The definition of property is broad enough to include the possessory right and imperfect interest of a purchaser of state land prior to payment of the purchase money or receipt of patent, and the state is not estopped from assessing such interest. *People v. Donnelly*, 58 Cal. 144.

It would be double taxation to assess all the corporate property of a corporation and also assess to each stockholder the shares of stock of such corporation owned by him *Burke v. Badlam*, 57 Cal. 594.

*That property shall be assessed in pro*



tion to its value, to be ascertained as provided by law, requires assessors to proceed to ascertain such value in the manner provided by law at the time of making the assessment. The manner provided at the time the constitution went into effect was not in conflict with the constitution. *Hyatt v. Hall*. 54 Cal. 353.

Section 3681 of Political Code providing for the adding of taxes upon property which escaped taxation the previous year is constitutional. Without such provision taxation would be unequal. [*Approving Biddle v. Oakes*, 59 Cal. 94.] *Farmers' etc. Bank v. Board*, 97 Cal. 318, 324.

A seat in the San Francisco stock and exchange board is not taxable property. So held in *Lowenberg v. Greenebaum*, 99 Cal. 162; a seat in the board is a mere personal privilege of being and remaining a member of a voluntary association with the assent of the associates, and is not "property" that would pass by sale under a common writ of execution, and following those views it is held that it has no qualities which make it taxable as property. [*Clute v. Loveland*, 68 Cal. 254, distinguished.] *City and County of San Francisco v. Anderson*, 103 Cal. 70, and *City and County of San Francisco v. Wangenheim & Co.*, 37 Pac. Rep. 221.

It was held under the act of March 19, 1878 [Stats. p. 338] which was a special law to *legalize assessments in San Francisco, that an assessment of the capital stock of a private*

corporation was valid. *San Francisco v. S. V. W. W.*, 54 Cal. 571.

The section is referred to in connection with powers of supervisors to collect license tax, (opinion of Thornton, J.) in *Ex parte Wolters*, 65 Cal. 271; and as to pleading in action to recover taxes from railroad company in *People v. C. P. R. R. Co.*, 83 Cal. 406; and in relation to Los Angeles City Charter, in *Security Sav. Bank, etc. v. Hinton*, 97 Cal. 214; and in concurring opinion of Sharpstein, J., as to power of board of equalization to raise entire assessment roll, including assessment of money. *People v. Dunn*, 59 Cal. 336; and of Thornton, J., in *W. F. & Co. v. Board of Equalization*, 56 Cal. 202.

The provisions of the act of March, 1895 [Stats. p. 267], to establish fees of county, township and other officers and of jurors and witnesses, violates this section in the provision requiring an additional tax or deposit, in probate cases upon each additional one thousand dollars in excess of three thousand dollars, shown by the inventory and appraisement. This is pronounced "an extraordinary tax" upon the property to which it applies, in addition to the equal and uniform tax to which alone all property in the state is liable. *Fatjo v. Pfister*, 117 Cal. 86.

An assessment by an irrigation district upon pueblo lands within a city which is within *the district*, which lands are *unoccupied and uncultivated*, but susceptible of cultivation by irrigation, and which would be

benefited by irrigation, is not "a tax" upon the property of the municipality—and such pueblo lands may be sold to pay the *assessment*. *San Diego v. Linda Vista Ir. Dist.*, 108 Cal. 192.

The term *assessment* is often popularly used as a synonym for taxation, but this is not its strict legal significance. *Holley v. County of Orange*, 106 Cal. 425.

Railroad bonds held by the owner in this state are taxable here notwithstanding they are secured by mortgage on railroad property situated out of this state. Credits have their situs at the domicile of the creditor. Where the constitution requires the taxation of bonds it is not in the power of the legislature to exempt them. *Mackay v. San Francisco*, 113 Cal. 394.

The statute requiring the assessor to collect taxes on personal property which is not secured by lien upon real property, at the time of making assessment violates no constitutional provision. *Rode v. Siebe*, 119 Cal. 519.

This section is not self-executing, but merely fixes the liability of property to taxation, and the standard upon which it is based, viz., in proportion to its value, but confides the duty of prescribing the machinery by which to ascertain the value to the legislature, with which the power of taxation is lodged. *McHenry v. Downer*, 116 Cal. 23.

SECTION 2. Land and the improvements thereon, shall be separately assessed. Cultivated and uncultivated land, of the same quality, and similarly situated, shall be assessed at the same value.

An assessment of land claimed and occupied by a railroad company as a right-of-way, together with the track and all substructures and superstructures which support the same, without any separate assessment of land and improvements, as required in this section, is void. *Railroad Co. v. Mecartney*, 104 Cal. 621.

SECTION 3. Every tract of land containing more than six hundred and forty acres, and which has been sectionized by the United States government, shall be assessed for the purposes of taxation, by sections or fractions of sections. The legislature shall provide by law for the assessment in small tracts of all lands not sectionized by the United States government.

SECTION 4. A mortgage, deed of trust, contract or other obligation by which a debt is secured, shall, for the purposes of assessment and taxation, be deemed and treated as an interest in the property affected thereby. Except as to railroad and other *quasi* public corporations, in case of debts so secured, the value of the property affected by such mortgage, deed of trust, contract or obligation, less the value of such security shall be assessed and taxed to the owner of the property, and the value of such security shall be assessed and taxed to the owner thereof, in the county, city, or district in which the property affected thereby is situate. The taxes so levied shall be a lien upon the property and security, and may be paid by either party to such security; *if paid by the owner of the security, the tax so levied upon the property affected thereby shall become a part of the debt so secured; if the*

owner of the property shall pay the tax so levied on such security, it shall constitute a payment thereon, and to the extent of such payment a full discharge thereof; provided, that if any such security or indebtedness shall be paid by any such debtor or debtors, after assessment and before the tax levy, the amount of such levy may likewise be retained by such debtor or debtors, and shall be computed according to the tax levy for the preceding year.

The right of mortgagor to retain amount of mortgage tax according to rate of previous year, is not exclusive, but he may afterwards recover same by action, if the mortgagee does not pay it and the mortgagor is obliged to relieve his land from the tax lien. [S. G. V. L. & W. Co. v. Witmer, 23 Pac. Rep. 500, affirmed] 96 Cal. 623, Beatty, C. J., and Harrison, J., dissenting. See Political Code, section 3627.

An assessment levied by irrigation districts, although referable to the power of taxation, is distinct from a tax, and is not subject to the provision requiring mortgages, etc., to be deducted from value of land, but may be levied upon all the real property within the district without such deductions. *Tregea v. Owens*, 94 Cal. 318, affirming *In re Bonds Madera Ir. Dist.*, 92 Cal. 296.

The assessment of the interest of the mortgagor must be complete within itself, so as to show upon its face, without reference to the assessment of the interest of the mortgagee, that the value of the mortgage interest is deducted. *Knott v. Peden*, 84 Cal. 299.

Assessment of mortgage interest is assessment of an interest in the land itself, and a tax sale under such assessment conveys an interest in the land. Such sale is not merely a sale of the mortgage. *Dorland v. Mooney*, 72 Cal. 34.

Under this constitution the mortgage security is assessed as an interest in the land to the mortgagee, and either party can pay the tax thereon. [Considered with reference to payment of taxes under adverse possession.] *Brown v. Clark*, 89 Cal. 196, 202.

A clause in a mortgage to the effect that the mortgagee may pay taxes assessed against the land, and that money so paid with interest thereon shall be included in and secured by the mortgage, does not render void the agreement to pay interest on the mortgage debt. *Mayre v. Hart*, 76 Cal. 291.

All mortgagors except railroads are given the benefit of the deduction of mortgage from value of land, and if the mortgage belongs to the state, the mortgagor is still entitled to the deduction, although the mortgage cannot be assessed. *People v. Supervisors*, 77 Cal. 137.

A mortgage given in November, 1879, to secure a promissory note, contained no special covenant as to payment of taxes. The mortgagor having paid taxes assessed against the mortgage interest after the adoption of this constitution, was entitled to deduct the amount thereof, when he paid up the note in 1883. *Hay v. Hill*, 65 Cal. 383. [Approving, *McCoppin v. McCartney*, 60 Cal. 371.]

Mortgages, deeds of trust, contracts or other obligations secured upon the property of railroad and other *quasi* public corporations are not to be deemed or treated as an interest in the property for the purpose of taxation, and such mortgages, etc., are not to be deducted, but railroads operated in more than one county must be assessed only by the State Board of Equalization [section 10, article XIII], C. P. R. R. Co. *v.* State Board of Equalization, 60 Cal. 35.

A mortgagee, prior to the adoption of this constitution, did not have a vested right of exemption from taxation which extended beyond the life of the former constitution. Even if he had a contract with his mortgagor by which the latter agreed to pay all taxes, a change in the law which imposed the duty on him to pay the tax in the first instance, would not violate the obligation of the contract. The plain intent of the constitution is to subject to taxation classes of property previously exempt. *McCoppin v. McCartney*, 60 Cal. 367.

A mortgage made in 1879, prior to the adoption of the constitution, contained a clause that the mortgagee might pay any tax, etc., levied against the land and the mortgagor would repay the same, and that the amount so paid would be secured by the mortgage. In 1880 the mortgage was assessed *separate* from the land. The mortgage was *an interest* in the land, the mortgage tax was *a tax upon an interest* in the land. The contract

was valid when made and the mortgagee was entitled to recover the tax paid by him on the mortgage. *Beckman v. Skaggs*, 59 Cal. 541.

It would be double taxation to assess all the tangible property and franchise of a corporation and also assess to each stockholder the value of his shares of stock. *Burke v. Badlam*, 57 Cal. 594. See cases collected under section 9, this article.

The legislature has power to make the lien for taxes paramount to all other liens upon land, so that the purchaser at tax sale takes title free from incumbrance. The personal property tax being made such lien upon land, takes precedence of a mortgage incumbrance. *California Loan Co. v. Weis*, 118 Cal. 492.

SECTION 5. Every contract hereafter made, by which a debtor is obligated to pay any tax or assessment on money loaned, or on any mortgage, deed of trust, or other lien, shall, as to any interest specified therein, and as to such tax or assessment, be null and void.

Evidence of parol agreement by which the borrower agrees to pay taxes levied on the money borrowed, or on the mortgage, tends to establish illegality under section 1856, Code of Civil Procedure. *Daw. v. Niles*, 33 Pac. Rep. 1114.

As to contract made before the adoption of this constitution, and which was valid when made, see *Beckman v. Skaggs*, 59 Cal. 541.

*A cotemporaneous agreement between mortgagor and mortgagee, to the effect that mortgagor shall be entitled to a credit of two and*



one-half per cent. if he shall produce receipts showing payment of all taxes against the mortgaged property, even if construed to mean the mortgage tax, is not invalid, because the constitution [Sec. 4, Art. XIII], permits the mortgagor to pay the mortgage tax, and to deduct the amount so paid from the debt. *Hewitt v. Dean*, 91 Cal. 5.

A clause in a mortgage to the effect that the mortgagee may pay taxes assessed against the land, and that money so paid, with interest thereon, shall be included in and secured by the mortgage, does not render void the agreement to pay interest on the mortgage debt. *Mayre v. Hart*, 76 Cal. 291.

A provision in a mortgage that upon foreclosure the mortgagee may recover all payments made by him "for taxes and assessments on said premises, including taxes on the interest of the mortgagee therein by reason of this mortgage," contravenes this provision of the constitution, and is subject to the penalty therein provided; and the mortgage is void to the extent of the "interest" on the money. [*Harralson v. Barrett*, 99 Cal. 607.] *Garmes v. Jensen*, 103 Cal. 376.

Evidence of a cotemporaneous oral agreement between mortgagor and mortgagee that the mortgagor would pay all taxes that might be assessed on the mortgage or the indebtedness secured thereby, and which is offered for the purpose of invalidating the promise in the note to pay interest, is inadmissible. *Daw v. Niles*, 104 Cal. 107-110.

An agreement, either verbal or in writing, that if the mortgagor should pay the state and county taxes each year assessed against the mortgage, he should be credited upon the interest due upon the mortgage note, with one and a half per cent. thereof, and the amount of interest he should pay the mortgagee would be seven per cent., is not a violation of the constitution, and does not preclude the mortgagee from collecting the conventional rate of interest specified in the note. [Hewitt v. Dean, 91 Cal. 10.] Cal. State Bank v. Webber, 110 Cal. 539. See also Harralson v. Barrett, 99 Cal. 607.

SECTION 6. The power of taxation shall never be surrendered or suspended by any grant or contract to which the state shall be a party.

SECTION 7. The legislature shall have the power to provide by law for the payment of all taxes on real property by installments.

SECTION 8. The legislature shall by law require each taxpayer in this state to make and deliver to the county assessor annually a statement, under oath, setting forth specifically all the real and personal property owned by such taxpayer, or in his possession, or under his control, at twelve o'clock meridian, on the first Monday of March.

The provision of the charter of the city of Stockton, adopted prior to the adoption of this constitution, required the city council to assess, levy, etc., taxes upon all taxable property within the city, and required the city assessor *to prepare a list of such property between the first day of January and the first Monday in*

April of each year. *Held*, said provisions were not repealed by section 8, article XI, of this constitution; and an assessment of a mortgage made in conformity with the provisions of the charter is not invalid, although the mortgage was not executed until after the first Monday in March. City of Stockton v. Ins. Co., 73 Cal. 621.

Sections 3633 and 3629 of Political Code, by which the assessor is required to make an assessment after the taxpayer has neglected or refused to furnish a statement, and to note the refusal on the assessment book, are not unconstitutional. *Oreña v. Sherman*, 61 Cal. 101.

SECTION 9. A state board of equalization, consisting of one member from each congressional district in this state, shall be elected by the qualified electors of their respective districts, at the first general election to be held after the adoption of this amendment, and at each general election every four years, whose term of office shall be for four years, whose duty it shall be to equalize the valuation of the taxable property in the several counties of the state for the purposes of taxation. The controller of state shall be *ex officio* a member of the board. The boards of supervisors of the several counties of the state shall constitute boards of equalization for their respective counties, whose duty it shall be to equalize the valuation of the taxable property in the county for the purpose of taxation; provided, such state and county boards of equalization are hereby authorized and empowered, under such rules of notice as the county boards may prescribe as to the county assessments, and under such rules of notice as the state board may prescribe as to the action of the state board, to increase or lower the entire assessment roll, or any assessment contained therein, so as to equalize the assessment of the prop-

erty contained in said assessment roll, and make the assessment conform to the true value in money of the property contained in said roll; provided, that no board of equalization shall raise any mortgage, deed of trust, contract, or other obligation by which a debt is secured, money, or solvent credits, above its face value. The state board of equalization elected in eighteen hundred and ninety-four shall continue in office until their successors, as herein provided for, shall be elected and shall qualify. [Amendment ratified at election Nov. 6, 1894.]

[AMENDMENT OF 1884.]

SECTION 9. A state board of equalization, consisting of one member from each congressional district in this state, as the same existed in eighteen hundred and seventy-nine, shall be elected by the qualified electors of their respective districts, at the general election to be held in the year eighteen hundred and eighty-six, and at each gubernatorial election thereafter, whose term of office shall be for four years, whose duty it shall be to equalize the valuation of the taxable property in the several counties of the state for the purposes of taxation. The controller of state shall be *ex officio* a member of the board. The boards of supervisors of the several counties of the state shall constitute boards of equalization for their respective counties whose duty it shall be to equalize the valuation of the taxable property in the county for the purpose of taxation; provided, such state and county boards of equalization are hereby authorized and empowered, under such rules of notice as the county boards may prescribe as to the county assessments, and under such rules of notice as the state board may prescribe as to the action of the state board, to increase or lower the entire assessment roll, or any assessment contained therein, so as to equalize the assessment of the property contained in said assessment roll, and make the assessment conform to the true value in money of the property contained in said roll; provided, that no board of equalization shall raise

any mortgage, deed of trust, contract, or other obligation by which a debt is secured, money or solvent credits, above its face value. The present state board of equalization shall continue in office until their successors, as herein provided for, shall be elected and shall qualify. The legislature shall have power to redistrict the state into four districts, as nearly equal in population as practicable, and to provide for the elections of members of said board of equalization. [Ratification declared Feb. 12, 1885.]

[ORIGINAL SECTION.]

SECTION 9. A state board of equalization, consisting of one member from each congressional district in this state, shall be elected by the qualified electors of their respective districts at the general election to be held in the year eighteen hundred and seventy-nine, whose term of office, after those first elected, shall be four years, whose duty it shall be to equalize the valuation of the taxable property of the several counties in the state for the purposes of taxation. The controller of state shall be *ex officio* a member of the board. The boards of supervisors of the several counties of the state shall constitute boards of equalization for their respective counties, whose duty it shall be to equalize the valuation of the taxable property in the county for the purpose of taxation; provided, such state and county boards of equalization are hereby authorized and empowered, under such rules of notice as the county boards may prescribe as to the county assessments, and under such rules of notice as the state board may prescribe, as to the action of the state board, to increase or lower the entire assessment roll, or any assessment contained therein, so as to equalize the assessment of the property contained in said assessment roll, and make the assessment conform to the true value in money of the property contained in said roll.

*The amendment to this section of 1884 was properly adopted. People v. Strother, 67 Cal. 624.*

The power of the state board of equalization is not confined to adjustment of assessments for state purposes, but in raising or lowering assessments it may affect the assessment for county as well as for state purposes. *Baldwin v. Ellis*, 68 Cal. 495.

The tax payer is entitled to notice of the meetings of the county board at which his taxes may be increased. But the ninth section of the act of 1874 [Stats. p. 477], attempts to provide for an assessment, in San Francisco, which is arbitrary and absolute, without the possibility of equalization by the board of supervisors, as it provides for an assessment to be made after the time in which such board can act. The legislature has no power to deprive the taxpayer of an opportunity of appearing before the board for the purpose of contesting the amount assessed against him. [Neither *City and County of S. F. v. Flood*, 64 Cal. 504, nor *Oreña v. Sherman*, 61 Cal. 101, conflict with these views.] *People v. Pittsburg R. R. Co.*, 67 Cal. 625.

A raise in the assessment of a county, by the state board operates upon assessments of mortgages. *Schroeder v. Grady*, 66 Cal. 213, affirming *People v. Dunn*, 59 Cal. 328, *Ross*, J. dissenting.

So far as relates to the state board the section has reference to equalization between counties, and if sections 3692, 3693 of Political Code as amended in 1880, attempt to provide for equalization of individual assessments, they are void. *S. F. & N. P. R. R. v. State*

Board of Equalization, 60 Cal. 12. This section has no relation to the assessment of the property of railroads operated in more than one county. *C. P. R. R. Co. v. State Board of Equalization*, 60 Cal. 35.

This section is referred to in *F. & M. Bank v. Board*, 97 Cal. 324, where many of the former cases relating to assessments and equalization are commented upon and distinguished, which see.

The "proviso" in this section is to be read distributively, *reddendo singula singulis*, and the power of the state board is to equalize the assessment rolls of the various counties, by comparing the assessment roll of each county with the roll of each and all others, and thus to make the assessment conform to the true value in money of the property contained in the respective rolls. *Wells, Fargo & Co. v. State Board*, 56 Cal. 194; affirmed in *People v. Dunn*, 59 Cal. 328. The true value of money in money is money. The court takes judicial notice that a dollar in money cannot be assessed at more than a dollar; to assess it at more cannot make it conform to its true value in money. The state board cannot cause it to be assessed at more than its nominal value by ordering the assessment roll of a county raised. An order of the state board raising the entire assessment roll of the city and county of San Francisco is not void, but in obeying the order, the auditor is not authorized to add to the assessment for money which *has been* assessed at so many dollars. If ten

dollars had been assessed at less than ten dollars the auditor could be compelled to change the valuation. The court cannot say as matter of law what the true value of a mortgage, deed of trust, etc., is. The constitution does not prohibit an increase of all other property so as to make it conform to its true value in money. The "true value in money" of such securities depends upon various circumstances, and they may be worth more than their face value, and the general raise ordered by the state board may work injustice in particular cases, but if so the fault is in the system. Sharpstein, J. held that the order of the state board raised all assessments including money. *People v. Dunn*, 59 Cal. 328. [Since this decision the section was amended to read as above.]

Where the state board of equalization raised the entire assessment of property in San Francisco, including certain railroad bonds which had been assessed at their face value, it was the duty of the owner of the bonds to have tendered to the tax collector the amount of the tax levied at the face value, and it was the duty of the tax collector to accept that amount. *Mackay v. San Francisco*, 113 Cal. 394-402.

SECTION 10. All property, except as hereinafter in this section provided, shall be assessed in the county, city, city and county, town, township or district in which it is situated, in the manner prescribed by law. The franchise, roadway, roadbed, rails and rolling stock of all railroads operated in more than one county in this state, shall be assessed by the state board of equalization, at their actual value, and the same shall be apportioned to



the counties, cities and counties, cities, towns, townships and districts in which such railroads are located, in proportion to the number of miles of railway laid in such counties, cities and counties, cities, towns, townships and districts.

Property not specified in this section is to be assessed by the local assessors, and the steamers used by the C. P. R. R. Co. in transporting its cars across the bay of San Francisco are not included therein. Road-bed, roadway, rails and rolling stock nor franchise do not embrace steamers. *San Francisco v. C. P. R. R. Co.*, 63 Cal. 467. The constitution does not require that the assessed value of each item should be apportioned, nor do the provisions of Political Code [Sec. 3650]. The road-bed is the foundation on which the superstructure of a roadway rests; the roadway is the right of way—which property is liable to taxation; the rails in place constitute the superstructure. An assessment of these items separately does not constitute double taxation. It is not required that the apportionment to cities and to towns and to counties should be one act. Section 3666, Political Code, as it originally read, was declared unconstitutional in *Houghton v. Austin*, 47 Cal. 646, in so far as it delegated to the board the power to fix the rate of taxation because it was a delegation of legislative power, but the section at present does not contain such delegation of power. The franchise of a railroad is property, and is not exempt from taxation by reason of its being an instrumentality employed by congress to carry into

operation the powers of the general government. *S. F. & N. P. R. R. v. State Board of Equalization*, 60 Cal. 12. *C. P. R. R. v. same*, *Id.* 34. In *Pac. Coast Ry. Co. v. Ramage*, Tax Collector, No. 19,343, 37 Pac. Rep. 532, it is held that a wharf upon which a railroad company has laid its track and constructed buildings, the wharf having been acquired by the company from a private individual and not having been included in the franchise under which the company constructed its general line of road, is not property subject to be assessed by the state board, although the length of road described in the state assessment may be sufficient to include the wharf property, and that said wharf, etc., is properly assessed by the county assessor.

All property except railroads operated in more than one county must be assessed in the county in which it is situated. The situs of personal property is not changed by the death of the owner, and money belonging to the estate of the deceased is to be assessed in the county of his residence at the time of his death. *City and County of San Francisco v. Lux*, 64 Cal. 481.

The section is referred to in connection with sections 3665, 3670, Political Code, relating to pleadings in actions to recover taxes assessed against railroads operated in more than one county, in *People v. C. P. R. R. Co.*, 83 Cal. 393, 413. See the same case also as to this section not being in violation of United States constitution. And as to removal of such

actions to federal courts see *S. P. R. R. Co. v. Superior Court*, 63 Cal. 607. The district attorney of a county has no authority to consent to entering judgment for less than the full amount of state and county tax sued for. The attorney-general can appeal from order refusing to set aside such judgment. *County of Sacramento v. C. P. R. R. Co.*, 61 Cal. 250. See the last three cases to the effect that railroads operated in more than one county is the only property that can be assessed by the state board, and that no board or officer, except possibly the state board of equalization, could raise or lower such assessment. See also the cases collected under section 9 for various references to this section.

This section of the constitution and section 3665, Political Code, require the state board of equalization to include in its assessment the franchise of railroads. The state franchise is property susceptible of valuation. *People v. C. P. R. R.*, 105 Cal. 591.

SECTION 11. Income taxes may be assessed to and collected from persons, corporations, joint-stock associations, or companies resident or doing business in this state, or any one or more of them, in such cases and amounts, and in such manner, as shall be prescribed by law.

SECTION 12. The legislature shall provide for the levy and collection of an annual poll tax of not less than two dollars on every male inhabitant of this state, over twenty-one and under sixty years of age, except paupers, idiots, insane persons and Indians, not taxed. Said tax shall be paid into the state school fund.

The provisions of the Political Code and county government act authorizing county assessors to retain as compensation for their services in collecting, fifteen per cent. of all poll taxes collected by them, are not, as to the state poll tax, unconstitutional. *County of San Luis Obispo v. Felts*, 104 Cal. 63.

SECTION 12¾. Fruit and nut bearing trees under the age of four years from the time of planting in orchard form, and grapevines under the age of three years from the time of planting in vineyard form, shall be exempt from taxation, and nothing in this article shall be construed as subjecting such trees and grapevines to taxation. [Amendment ratified at election Nov. 6, 1894.]

SECTION 13. The legislature shall pass all laws necessary to carry out the provisions of this article.

Article XIII contains all the constitutional provisions relative to assessment of property for taxation, and by the last section of the article the whole subject is relegated to the legislature as to the mode of carrying the system into effect. But this power of the legislature is governed by other provisions of the constitution, prohibiting special legislation, etc. The provisions of sections 3665, 3670, of Political Code, relative to assessment of railroad property and complaints in suits for collection of same, are special and discriminating. An obnoxious "special" provision may be contained in a "general" law. Citing *Earle v. Board of Education*, 55 Cal. 489; *Miller v. Kister*, 68 Cal. 142; *San Francisco v. S. V. W. W.*, 48 Cal. 493. The assessment of railroad

property in two or more counties is left by the constitution to the state board of equalization, but for the apportionment thereof to the several counties, it was necessary for the legislature to act. People v. C. P. R. R., 83 Cal. 393.

## ARTICLE XIV.

### WATER AND WATER RIGHTS.

SECTION 1. The use of all water now appropriated, or that may hereafter be appropriated, for sale, rental, or distribution, is hereby declared to be a public use, and subject to the regulation and control of the state in the manner to be prescribed by law; provided, that the rates or compensation to be collected by any person, company, or corporation in this state for the use of water supplied to any city and county, or city or town, or the inhabitants thereof, shall be fixed, annually, by the board of supervisors, or city and county, or city or town council, or other governing body of such city and county, or city or town, by ordinance or otherwise, in the manner that other ordinances or legislative acts or resolutions are passed by such body and shall continue in force for one year and no longer. Such ordinances or resolutions shall be passed in the month of February of each year, and take effect on the first day of July thereafter. Any board or body failing to pass the necessary ordinances or resolutions fixing water rates, where necessary, within such time, shall be subject to peremptory process to compel action at the suit of any party interested, and shall be liable to such further processes and penalties as the legislature may prescribe. Any person, company, or corporation collecting water rates in any city and county, or city or town in this state, otherwise than as so *established*, shall forfeit the franchises and water *works* of such person, company, or corporation to the city and county, or city or town where the *same* are collected, for the public use.

Irrigation canal in street, if a nuisance, may be so controlled as to abate nuisance, but total destruction should not be decreed, according to rule applicable to public corporation. *City of Fresno v. F. C. & I. Co.*, 98 Cal. 179.

The act of the city council in fixing water rates is a legislative act, and when performed, is to receive all the presumptions and sanctions which belong to acts of legislative bodies generally. It must be assumed that they have adopted a measure of compensation which will be just toward the rate payer as well as the company, and that the mode of collection is that which, in the judgment of the legislative body, will best subserve the interest and rights of both parties. *Sheward v. C. W. Co.*, 90 Cal. 640.

The constitution contemplates reasonable and just rates. The power to regulate is not authority to confiscate, and if used arbitrarily without a fair investigation, and rates are fixed which entail a loss to the party supplying water, the ordinance fixing such rates will be set aside by the courts as unreasonable and void. *S. V. Water Works v. San Francisco*, 82 Cal. 286.

The supervisors have no right under the constitution nor under act of March 12, 1885 [Stats. p. 95] to fix rates for water of a corporation organized for the purpose of supplying water to its own stockholders to be used upon their own lands. *McFadden v. Los Angeles County*, 74 Cal. 571.

The rights of a riparian owner may be taken under power of eminent domain (compensation being made), for the purpose of supplying farming neighborhood with water. *Lux v. Haggin*, 69 Cal. 255.

The use of water appropriated for sale, rental, or distribution is a public use; and the right to collect compensation for use of water to the inhabitants of any city is a franchise which cannot be exercised except by authority of and in the manner prescribed by law. Water appropriated for distribution and sale is *ipso facto* devoted to a public use. Each member of the community, by paying the rate fixed for supplying it has a right to use a reasonable quantity of it, in a reasonable manner. *McCreary v. Beaudry*, 67 Cal. 120. Is a public use. *People v. Stephens*, 62 Cal. 209.

The consolidated city and county government of San Francisco exists under the consolidation act of 1856. Under said act—its charter—it is provided that ordinances upon certain enumerated subjects shall not be effective unless approved by the mayor, or, unless after his veto, nine members of the board shall vote therefor. *Held*, the constitutional requirement for fixing water rates in February of each year, is not of that class of acts which requires approval of the mayor. The fixing of rates may be accomplished by a majority vote of the board, and to hold that approval of the mayor was requisite would require *nine* members of the board to overcome any

objection raised by the mayor, which might prevent a compliance with the requirements of the constitution. *Jacobs v. Board of Supervisors*, 100 Cal. 121.

The power of the state to fix and regulate the rates of compensation to be charged by persons or corporations in charge of public utilities (such as water), is so limited by the constitution of the United States that it cannot be exercised to such an extent as to require such persons or corporations to furnish its services or property without reward; and the courts may review such action to the extent of ascertaining whether the rates fixed will yield some reward for the services or property furnished. *San Diego Water Co. v. San Diego*, 118 Cal. 565, 585.

The section is mentioned in *Merton v. Broderick*, 118 Cal. 479—an action brought to oust the board of supervisors of the city and county of San Francisco for failure to fix water rates for the year.

This section and *Jacobs v. Board of Supervisors*, 100 Cal. 121, cited to the effect that the mayor of San Francisco was not authorized to veto an ordinance fixing water rates in *Eisenhuth v. Ackerman*, 105 Cal. 91.

One community cannot be suppressed for the benefit of another. The rights of riparian owners and dwellers cannot be appropriated to public use without compensation. *People v. Elk River M. & L. Co.*, 107 Cal. 225.

It is held that the rates fixed by the municipal or county authorities must be reason-



able, and afford just compensation. [S. V. W. Works *v.* San Francisco, 82 Cal. 286.] San Diego W. Co. *v.* Flume Co., 108 Cal. 560.

In an action by a corporation to condemn land for purposes of its irrigating ditches, the complaint alleged its ownership of ditches and land in the county where the action was brought. Defendant's answer traversed all the material allegations, and then, in abatement, pleaded non-compliance with section 299, Civil Code, which requires the filing of articles of incorporation in each county where the corporation owns land. The plea in abatement was held good. *Emigrant Ditch Co. v. Webber*, 108 Cal. 90.

The word "appropriated" in the constitution, relating to waters for sale or distribution, is not to be confined to water appropriated under the provisions of the Civil Code; but when water is designed, set apart and devoted to purposes of sale, rental or distribution, it is "appropriated" to such uses, or some of them, and becomes subject to the "public use," declared by the constitution, without reference to the mode of its acquisition. *Merrill v. Southside Ir. Co.*, 112 Cal. 433.

SECTION 2. The right to collect rates or compensation for the use of water supplied to any county, city and county, or town, or the inhabitants thereof, is a franchise, and cannot be exercised except by authority of and in the manner prescribed by law.

*The right to collect rates is a franchise. The section has no application to water fur-*

nished by the municipality itself, but it refers to rates or compensation to be collected for water authorized by section 19, article XI, to be introduced into cities by individuals or companies incorporated for that purpose. Sections 1 and 2, article XIV, and section 19, article XI, are to be read and taken together. *People v. Stephens*, 62 Cal. 209.

The act of March 7, 1887 [Stats. p. 29], known as the Wright act, is constitutional. The corporations for which it provides are *quasi* public corporations, and the mode prescribed for their exercise of the power of taxation need not follow exactly the mode provided in the constitution for the assessment and collection of taxes for general state purposes. *In re Madera Ir. Dist.*, 92 Cal. 324. See *In re Central Ir. Dist.*, 117 Cal. 389.

Perhaps to a greater extent than any of the other states, California, speaking through the acts of her legislature, her court of last resort, and her constitution, seems to have considered the irrigation of lands and the supplying of mines with water as of great public concern. *Irrigation District v. Williams*, 76 Cal. 369.

The Spring Valley Water Company was organized under the act of 1858 [Stats. p. 218], and the 4th section of that act provided that the water rates should be fixed by a board of commissioners to be selected as therein prescribed. *Held*, said section of the act was *superseded by the adoption of the constitution of 1879*, and that rates must thereafter be

fixed as provided in article XIV of said instrument, and the statute enacted to carry it into effect. [Stats. 1881, p. 54.] *S. V. W. W. v. Supervisors*, 61 Cal. 3.

Since the new constitution, the supervisors have had the power to fix the rate or compensation to be allowed for water supplied to the city for fires, street sprinkling, parks, etc., as well as for water supplied to private persons; and an ordinance leaving the rate to be charged to private persons indefinite and dependent upon amount paid by the public, is not a compliance with the constitution, because it does not fix the rate. According to the decision in *S. V. W. W. v. Supervisors*, 52 Cal. 122, the company is not required to furnish water to the city for public purposes free except for fires. *S. F. P. W. Factory v. Brickwedel*, 60 Cal. 166; *S. V. W. W. Co. v. San Francisco*, 61 Cal. 38.

Whether the use to which it is proposed to devote water is a public or private one, is a material issue in proceedings to condemn a right of way for a ditch, and must be specifically found upon. *Cummings v. Peters*, 56 Cal. 593.

This section is also referred to in most of the cases collected under section 1 of this article.

## ARTICLE XV.

## HARBOR FRONTAGES, ETC.

SECTION 1. The right of eminent domain is hereby declared to exist in the state to all frontages on the navigable waters of this state.

SECTION 2. No individual, partnership or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this state, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this state shall be always attainable for the people thereof.

SECTION 3. All tide lands within two miles of any incorporated city or town in this state, and fronting on the waters of any harbor, estuary, bay or inlet used for the purposes of navigation, shall be withheld from grant or sale to private persons, partnerships or corporations.

## ARTICLE XVI.

## STATE INDEBTEDNESS.

SECTION 1. The legislature shall not, in any manner, create any debt or debts, liability or liabilities, which shall, singly or in the aggregate with any previous debts or liabilities, exceed the sum of three hundred thousand dollars, except in case of war to repel invasion or to suppress insurrection, unless the same shall be authorized by law for some single object or work to be distinctly specified therein, which law shall provide ways and means, exclusive of loans, for the payment of the interest of such debt or liability as it falls due, and also to pay and discharge the principal of such debt or liability within twenty years of the time of the

contracting thereof, and shall be irrevocable until the principal and interest thereon shall be paid and discharged; but no such law shall take effect until, at a general election, it shall have been submitted to the people and shall have received a majority of all the votes cast for and against it at such election: and all moneys raised by authority of such law shall be applied only to the specific object therein stated, or to the payment of the debt thereby created, and such law shall be published in at least one newspaper in each county, or city and county, if one be published therein, throughout the state, for three months next preceding the election at which it is submitted to the people. The legislature may at any time after the approval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal the same.

Const. 1849, Art. VIII, Sec. 1.

## ARTICLE XVII.

### LAND AND HOMESTEAD EXEMPTION.

SECTION 1. The legislature shall protect, by law, from forced sale a certain portion of the homestead and other property of all heads of families.

Const. 1849, Art. XI, Sec. 15.

Mortgage foreclosure is forced sale according to section 1241, Civil Code, and section 1242 provides that homestead of married person cannot be conveyed or encumbered unless the instrument is executed and acknowledged by both husband and wife. *Held*, where they execute a deed absolute on its face, but which, by reason of contemporaneous oral agreement, is made in effect, a mortgage to secure existing indebtedness and for future advances to the husband, the incumbrance for future

advances being a mere oral agreement, and not executed and acknowledged by the wife it is not enforceable. [Distinguishing *Bull v. Coe*, 77 Cal. 54.] *Merced Bank v. Rosenthal*, 99 Cal. 39.

The exemption of homestead premises from forced sale is the special subject matter and object of section 1260, Civil Code, for the purpose of carrying into effect the constitutional provisions. The exemption is not an attribute, but an incident of homestead. Homestead premises may exceed the value limit of the exemption, and the excess in value does not invalidate the selection; the excess, though in fact used as a homestead, being not exempt from the claims of creditors. *Ham v. Santa Rosa Bank*, 62 Cal. 125.

Under section 15, article XI, of former constitution, it was held that although it gave a right to have a homestead protected, legislation was required to enforce it and make it available, and the provisions of the code directing what particular things were necessary to be done to protect a homestead must be fully and completely complied with. The clause requiring the declaration to contain an estimate of the actual cash value of the property is not directory merely. *Ashley v. Olmstead*, 54 Cal. 616.

In the constitution there is no limit to the value of the property thus to be protected. It is left to the legislature to determine what portion, to what limit and by what means it shall be protected. Exemption is a constitu-

tional right, incident to homestead, but the extent and means are left to the legislature. *Lubbock v. McMann*, 82 Cal. 226.

The subject of homesteads is wholly committed by the constitution to the legislature with simply the general mandate that the latter shall protect it by law from forced sale. *Beaton v. Reid*, 111 Cal. 487.

The mode of protecting the homestead from forced sale is left to the legislature, also the question of what the homestead shall consist. The courts have no power to increase or diminish the homestead, nor to say when it shall or shall not be subject to forced sale. Under section 1241 of the Civil Code an equitable lien for purchase money, as distinguished from a vendor's lien, is not chargeable upon the homestead. *Lee v. Murphy*, 119 Cal. 372.

SECTION 2. The holding of large tracts of land, uncultivated and unimproved, by individuals or corporations, is against the public interest, and should be discouraged by all means not inconsistent with the rights of private property.

The policy of the state is against the holding of large tracts of uncultivated land, and against selling land suitable for cultivation in tracts exceeding 320 acres, or to others than actual settlers. *Fulton v. Branan*, 88 Cal. 455.

*Referred to in cases collected under section 3, this article.*

SECTION 3. Lands belonging to this state, which are suitable for cultivation, shall be granted only to actual settlers, and in quantities not exceeding three hundred and twenty acres to each settler, under such conditions as shall be prescribed by law.

Lands granted to the state as swamp lands, but which afterwards become dry and fit for cultivation, can be granted only to actual settlers. *Goldberg v. Thompson*, 96 Cal. 117; *Marsh v. Hendy*, 27 Pac. Rep. 647, following *Fulton v. Branan*, 88 Cal. 455. Approved in *McNee v. Lynch*, *Id* 519, and in *McDonald v. Taylor*, 89 Cal. 43.

The fact that land is covered heavily in most places with redwood timber and brush, is broken and cut by ravines, etc., if half or more of any legal subdivision was suitable for cultivation, as to such subdivision, it is subject to purchase only by actual settler. *Jacobs v. Walker*, 90 Cal. 43. Whether land is suitable for cultivation or not is a question of fact. No narrow construction should be placed upon the words, "suitable for cultivation." *Fulton v. Branan*, *supra*. "Suitable for cultivation," includes all lands ready for occupation, and which by ordinary farming processes are fit for agricultural purposes. All timber lands are unfit for cultivation in their natural condition, but if they may be reclaimed by ordinary farming processes, they are suitable for cultivation. *Manley v. Cunningham*, 72 Cal. 236. See also *Wren v. Managan*, 88 Cal. 275.

*Swamp land is not suitable for cultivation,*



and as the law [Political Code, Sec. 3495] does not require "actual" settlement, such settlement need not be shown. *McIntyre v. Sherwood*, 82 Cal. 139.

As to the effect of possession, in contest against state certificate for school land, see *Trimmer v. Bode*, 82 Cal. 647.

Lands suitable for cultivation cannot be sold to a non-resident of the state, even though his application to purchase was made before this constitution took effect. *Manley v. Cunningham*, 72 Cal. 236; to same effect see *Mosely v. Torrence*, 71 Cal. 318; *Dillon v. Saloude*, 68 Cal. 268; *Johnson v. Squires*, 55 Cal. 103.

The person applying to purchase must be an actual settler. [Sec. 3495, Political Code.] *Gavitt v. Mohr*, 68 Cal. 506.

Applications to purchase state lands suitable for cultivation by one not an actual settler, and who had made no payment thereon, were made nugatory upon adoption of new constitution. *Urton v. Wilson*, 65 Cal. 11.

Where the rights of the settler attached prior to this constitution, they are not affected by it. *Laugenour v. Shanklin*, 57 Cal. 70.

The legislature is not prevented from annexing a similar condition [actual settlement] to lands not suitable for cultivation. The constitution does not affect land not suitable for cultivation. [*Dillon v. Saloude*, *supra*. Sec. 3500, Political Code, amended in 1880 and 1885.] *Taylor v. Weston*, 77 Cal. 534.

Upon the contention that a corporation is

not a citizen and cannot be an actual settler on lands and hence cannot be entitled to a patent from the state for swamp and overflowed lands, it was shown that this section did not apply to a corporation which had become the *bona fide* assignee of the certificate of purchase prior to the adoption of this constitution. *McCabe v. Goodwin*, 106 Cal. 491.

The section should have a liberal construction. The effort should be rather to extend than to restrict. *Albert v. Holber*, 111 Cal. 400.

## ARTICLE XVIII.

### AMENDING AND REVISING THE CONSTITUTION.

SECTION 1. Any amendment or amendments to this constitution may be proposed in the senate or assembly, and if two-thirds of all the members elected to each of the two houses shall vote in favor thereof, such proposed amendment or amendments shall be entered in their journals, with the yeas and nays taken thereon; and it shall be the duty of the legislature to submit such proposed amendment or amendments to the people in such manner, and at such time, and after such publication as may be deemed expedient. Should more amendments than one be submitted at the same election they shall be so prepared and distinguished, by numbers or otherwise, that each can be voted on separately. If the people shall approve and ratify such amendment or amendments, or any of them, by a majority of the qualified electors voting thereon, such amendment or amendments shall become a part of this constitution.

Const. 1849, Art. X, Sec. 1.

Amendments are to be proposed by a vote of *two-thirds of the members of both houses of the legislature*. This is not the enactment of

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a bill; but the legislature, and not two-thirds of both houses, must submit such amendment to the vote of the people, and this must be done by a bill in the usual manner of enacting laws. The manner, time and publication are to be provided in the legislative enactment. *Hatch v. Stoneman*, 66 Cal. 632.

It was held in *People v. Strother*, 67 Cal. 624, that the amendment of section 19, article XI, was properly adopted without the amendment itself having been copied into the journals. The same subject was discussed in *Oakland Pav. Co. v. Hilton*, 69 Cal. 479. Justices Thornton and McKee held a contrary view, while the case was decided by the majority of the court upon other grounds. In *Oakland Pav. Co. v. Tompkins*, 72 Cal. 5, this question is fully presented by Justice Temple, and the court, excepting Thornton, J., held that it is not required that proposed amendments shall be entered at large in the journals; that there is more than one mode of actually complying with the provisions of this section, and that a reference to the amendment by title and number is one mode, and a sufficient one. See also the concurring and dissenting opinions in *Thomason v. Ruggles*, 69 Cal. 465.

As to the journals, it is held that the court will not presume that acts or things required of the legislature were not done, simply because the journals fail to show that such things were done. *People v. Dunn*, 80 Cal. 213.

The constitution does not permit the legislature to propose an amendment that will not upon its adoption become an effective part of the constitution, nor one which if ratified will take effect only at the will of other persons, or upon the approval of such other persons, or on some specified act or condition. The proposed amendment to change the seat of government to the city of San Jose [amendment to Sec. 1, Art. XX of 1893], was invalid and ineffective. *Livermore v. Waite*, 102 Cal. 114.

SECTION 2. Whenever two-thirds of the members elected to each branch of the legislature shall deem it necessary to revise this constitution, they shall recommend to the electors to vote at the next general election for or against a convention for that purpose, and if a majority of the electors voting at such election on the proposition of a convention shall vote in favor thereof, the legislature shall, at its next session, provide by law for calling the same. The convention shall consist of a number of delegates not to exceed that of both branches of the legislature, who shall be chosen in the same manner, and have the same qualifications, as members of the legislature. The delegates so elected shall meet within three months after their election at such place as the legislature may direct. At a special election to be provided for by law, the constitution that may be agreed upon by such convention shall be submitted to the people for their ratification or rejection, in such manner as the convention may determine. The returns of such election shall, in such manner as the convention shall direct, be certified to the executive of the state, who shall call to his assistance the controller, treasurer and secretary of state, and compare the returns so certified to him; and it shall be the duty of the executive to declare, by his proclamation,

such constitution, as may have been ratified by a majority of all the votes cast at such special election, to be the constitution of the state of California.

Const. 1849, Art. X, Sec. 2.

## ARTICLE XIX.

### CHINESE.

SECTION 1. The legislature shall prescribe all necessary regulations for the protection of the state and the counties, cities and towns thereof, from the burdens and evils arising from the presence of aliens who are, or may become vagrants, paupers, mendicants, criminals, or invalids afflicted with contagious or infectious diseases, and from aliens otherwise dangerous or detrimental to the well-being or peace of the state, and to impose conditions upon which such persons may reside in the state, and to provide the means and mode of their removal from the state, upon failure or refusal to comply with such conditions; provided, that nothing contained in this section shall be construed to impair or limit the power of the legislature to pass such police laws or other regulations as it may deem necessary.

An act to provide for vaccination of all persons attending or who desire to attend public schools, is within the police and sanitary powers of the legislature. *Abeel v. Clark*, 84 Cal. 227.

It is not competent for the legislature, under the claim of police power, to enact a law punishing a physician who has been decided to be competent to practice, and a certificate issued to him, for what is styled "unprofessional conduct," and as advertising himself as a specialist in certain diseases.

That a rule of professional conduct by a board of medical men prohibiting such advertisements, and declaring them unprofessional, can be declared a misdemeanor and punished, would extend the police power beyond whatever has been allowed. [Per Thornton, J.] That the legislature had no power to confer upon a board or officer power to prescribe what acts shall constitute a misdemeanor as held in *Ex parte Cox*, 63 Cal. 21, commented on per Paterson, J. *Ex parte McNulty*, 77 Cal. 164.

The supplemental act of April 1, 1878, [Stats. p. 918] to regulate the practice of medicine, is not wholly unconstitutional. Citing *Ex parte Frazer*, 54 Cal. 94.

SECTION 2. No corporation now existing or hereafter formed under the laws of this state, shall, after the adoption of this constitution, employ, directly or indirectly, in any capacity, any Chinese or Mongolian. The legislature shall pass such laws as may be necessary to enforce this provision.

The state of California has no power to enact Chinese exclusion laws, nor to impose restrictions upon residence of Chinese who are here. *Ex parte Ah Cue*, 101 Cal. 197.

SECTION 3. No Chinese shall be employed on any state, county, municipal, or other public work, except in punishment for crime.

SECTION 4. The presence of foreigners ineligible to become citizens of the United States is declared to be dangerous to the well-being of the state, and the legislature shall discourage their immigration by all the means within its power. Asiatic coolieism is a form of human slavery, and is

forever prohibited in this state, and all contracts for coolie labor shall be void. All companies or corporations, whether formed in this country or any foreign country, for the importation of such labor, shall be subject to such penalties as the legislature may prescribe. The legislature shall delegate all necessary power to the incorporated cities and towns of this state for the removal of Chinese without the limits of such cities and towns, or for their location within prescribed portions of those limits, and it shall also provide the necessary legislation to prohibit the introduction into this state of Chinese after the adoption of this constitution. This section shall be enforced by appropriate legislation.

Admission of Chinese children to public schools, *Tape v. Hurley*, 66 Cal. 473.

## ARTICLE XX.

### MISCELLANEOUS SUBJECTS.

SECTION 1. The city of Sacramento is hereby declared to be the seat of government of this state, and shall so remain until changed by law; but no law changing the seat of government shall be valid or binding unless the same be approved and ratified by a majority of the qualified electors of the state voting therefor at a general state election, under such regulations and provisions as the legislature, by a two-thirds vote of each house, may provide, submitting the question of change to the people.

Const. 1849, Art. XI, Sec. 1.

The proposed amendment of this section by which it is intended to make San Jose the capital, upon condition that ten acres of land and one million dollars be donated to the state, and the approval of the governor, secretary of state and attorney-general, of the

site, does not effect a removal, although it also declares San Jose to be the seat of government. The vote of the people would not have the effect of making the change. Such vote could only act on the amendment as proposed, which would do away with the present seat of government, without the selection of a new one Paterson and McFarland, JJ., also holding that the seat of government cannot be changed by an amendment to the constitution. *Livermore v. Waite*, 102 Cal. 114.

SECTION 2. Any citizen of this state who shall, after the adoption of this constitution, fight a duel with deadly weapons, or send or accept a challenge to fight a duel with deadly weapons, either within this state or out of it, or who shall act as second or knowingly aid or assist in any manner those thus offending, shall not be allowed to hold any office of profit, or to enjoy the right of suffrage under this constitution.

SECTION 3. Members of the legislature, and all officers, executive and judicial, except such inferior officers as may be by law exempted, shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation:

"I do solemnly swear (or affirm, as the case may be,) that I will support the constitution of the United States and the constitution of the state of California, and that I will faithfully discharge the duties of the office of —, according to the best of my ability."

And no other oath, declaration, or test shall be required as a qualification for any office or public trust.

Const. 1849, Art XI, Sec. 3.

As to form of oath and where same is to be filed, member of board of health of San Fran-



cisco partakes of the nature of both a state and local officer. Oath filed with secretary of state was sufficient compliance with law to defeat proceedings in the nature of *quo warranto*. [Secs. 904, 907, 3004, 3007, Pol. Code.] *People v. Perry*, 79 Cal. 105.

SECTION 4. All officers or commissioners whose election or appointment is not provided for by this constitution, and all officers or commissioners whose offices or duties may hereafter be created by law, shall be elected by the people, or appointed, as the legislature may direct.

Const. 1849, Art. XI, Sec. 6.

Appointment to office is not exclusively an "executive" function, but so far as not regulated by express provision of the constitution, may be regulated by law, and may be exercised by the legislature. *People ex rel Waterman v. Freeman*, 80 Cal. 233.

By an amendatory act of 1889 [Stats. p. 148], the legislature authorized the police commissioners of Sacramento to appoint additional policemen. The act was void as in conflict with subdivision 28, section 25, article IV. It is also apparent from sections 4, 16, article XX, that the creation of offices is to be accomplished by the legislature directly, but it cannot be done by special legislation. *Farrell v. Board of Trustees*, 85 Cal. 408, Beatty, C. J., dissenting, Works and Fox, JJ., concurring, but not deciding that the legislature might not amend a special charter by a special act in a matter which is not prohibited by the constitution.

It is held that notwithstanding sections 4 and 16 of article XX of the constitution, the governor could not remove an incumbent of the office of police commissioner for San Francisco; that said office is not held at the pleasure of the appointing power. [*People v. Hammond*, 66 Cal. 655]; *People v. Menzies*, 110 Cal. 450. See also *People v. Edwards*, 93 Cal. 153, where the original appointing power had been abolished and the term of office of fire commissioner, had not been fixed.

SECTION 5. The fiscal year shall commence on the first day of July.

Const. 1849, Art. XI, Sec. 8.

The fiscal year ends on the 30th of June. *Rollins v. Wright*, 93 Cal. 395; *Brown v. Clark*, 89 Cal. 200.

SECTION 6. Suits may be brought against the state in such manner and in such courts as shall be directed by law.

Const. 1849, Art. XI, Sec. 11.

SECTION 7. No contract of marriage, if otherwise duly made, shall be invalidated for want of conformity to the requirements of any religious sect.

Const. 1849, Art. XI, Sec. 12.

SECTION 8. All property, real and personal, owned by either husband or wife before marriage, and that acquired by either of them afterwards by gift, devise, or descent, shall be their separate property.

Const. 1849, Art. XI, Sec. 14.

"Afterwards" means after the marriage and

before dissolution thereof. The earnings of the husband subsequent to the dissolution are neither community nor separate property. *In re Spencer*, 82 Cal. 110,

Reference is made to this section in *Spreckels v. Spreckels*, 116 Cal. 341, where it is said, the constitution does not mention "community property," but does define the separate property of the spouses. And it is held in that case that the amendment of section 172 of the Civil Code of 1891, forbidding the husband to make a gift of community property without the written consent of the wife, does not affect the husband's unlimited power of disposition and management of community property acquired prior to the amendment.

SECTION 9. No perpetuities shall be allowed except for eleemosynary purposes.

Const. 1849, Art. XI, Sec. 16.

This section is a renewal of section 16, article XI, of constitution of 1849. The perpetuities here prohibited are such as were obnoxious to the common law, as the same is adopted in this state by act of April 13, 1850. [Stats. p. 219. See Political Code, section 4468.] The adoption of the common law left undisturbed the distinction recognized by the constitution between prohibited perpetuities (including private trusts), and charities. The latter are not included in the common law rule. The courts of this state have inherent equity jurisdiction over trusts for charitable purposes. *Estate of Hinckley*, 58 Cal. 457.

The grant by congress of the Yosemite valley and the act of the state accepting it [Stats. 1865-6, p. 710], did not create a gift for charitable uses, such as may be regulated or enforced by courts of equity, nor can the obligations of the state in relation thereto be enforced by the courts of the state. *People v. Ashburner*, 55 Cal. 517.

The state, as *parens patriæ*, superintends the management of all public charities or trusts, and in these matters acts through her attorney-general; and it is both the right and duty of that officer to prosecute suits to remedy abuses in such trusts. *The People ex rel Ellert v. Cogswell*, 113 Cal. 134.

The term "eleemosynary," as used in this section of the constitution, is not confined to almsgiving or charity, but includes in its scope all charitable purposes, including schools as well as asylums, hospitals and religious institutions. The enforcement of charitable uses cannot be limited to any narrow and stated formula, but must expand with the advancement of civilization and the increasing needs of men, calling for the establishment of new charitable uses. *People ex rel Ellert v. Cogswell*, 113 Cal. 134.

The act of 1885 [Stats. p. 49], relating to trusts for charitable purposes is not unconstitutional, and a trust conveyance for the establishment of a polytechnic school, pursuant to the provisions of that act, does not create a perpetuity such as is forbidden by the consti-

tution. The People *ex rel* Ellert *v.* Cogswell, 113 Cal. 134.

The courts cannot declare valid, not even with the consent of parties, such trusts as are opposed to the express mandate and policy of the law. *In re Walkerly*, 108 Cal. 659.

SECTION 10. Every person shall be disqualified from holding any office of profit in this state who shall have been convicted of having given or offered a bribe to procure his election or appointment.

Const. 1849, Art. XI, Sec. 17.

SECTION 11. Laws shall be made to exclude from office, serving on juries, and from the right of suffrage, persons convicted of bribery, perjury, forgery, malfeasance in office, or other high crimes. The privilege of free suffrage shall be supported by laws regulating elections and prohibiting under adequate penalties all undue influence thereon from power, bribery, tumult, or other improper practice.

Const. 1849, Art. XI, Sec. 18.

The "primary election law" of 1897 [Stats. p. 115], is held unconstitutional as being special legislation and also as a legislative attempt to curtail the right of free suffrage, and it is held also to be an attempt to extend the right to classes of persons outside of those mentioned in the constitution. [Section 1, article II, Const.] *Spier v. Baker*, 120 Cal. 375.

The legislature cannot require criminal punishment of members of a board of supervisors who vote and act in favor of a discharge of duties of their office, although the majority of the board vote and act otherwise and become

guilty of malfeasance in office. A whole board cannot be ousted from office because a majority violate the law. [Garoutte, J.] *Morton v. Broderick*, 118 Cal. 488.

SECTION 12. Absence from this state, on business of the state or of the United States, shall not affect the question of residence of any person.

Const. 1849, Art. XI, Sec. 19.

SECTION 13. A plurality of the votes given at any election shall constitute a choice, where not otherwise directed in this constitution.

Const. 1849, Art. XI, Sec. 20.

SECTION 14. The legislature shall provide by law for the maintenance and efficiency of a state board of health.

SECTION 15. Mechanics, material men, artisans and laborers of every class, shall have a lien upon the property upon which they have bestowed labor or furnished material for the value of such labor done and material furnished; and the legislature shall provide by law for the speedy and efficient enforcement of such liens.

This section is not self-executing, but requires legislation. *Spinney v. Griffith*, 98 Cal. 149. And the provisions of laws enacted to carry it into effect must be complied with, in order to make the lien effectual. Where a contractor failed to file his contract with the recorder, the contract price being more than one thousand dollars, he was not entitled to a lien. *Morris v. Wilson*, 97 Cal. 644.

The constitution has provided, as the only means which the state has for the payment of its debts, the exercise of the sovereign power of ;

taxation. And for each political subdivision the rule is the same [Sec. 18, Art. XI], and one furnishing labor or materials to the state knows to what he must look for payment. He becomes a creditor of a specific fund, and has no rights except with respect to such fund. One cannot sue the state, unless expressly authorized by the legislature. [Sec. 6, Art. XX.] Under the constitution and laws of the state, there is no right of lien in favor of mechanics or others against any public building, and no such lien can be enforced against a public school building. *Mayrhofer v. Board of Education*, 89 Cal. 110. See also *Russ & Sons Co. v. Crichton*, 117 Cal. 699.

Commenting on *Latson v. Nelson*, [XI Pac. L. J. 589]. *Held*, the present constitution has not changed the rule that where a "valid contract" existed between the owner and contractor, the former could not be made liable to sub-contractors beyond the amount fixed therein. The provision of section 1184, Code of Civil Procedure, declaring that in certain cases the sub-contractor, laborer and material man shall be deemed to have contracted directly with the owner, and have a valid lien for labor and material, are not unconstitutional. [So. Cal. Lumber Co. v. Schmidt, 74 Cal. 625.] *Kellogg v. Howes*, 81 Cal. 170. To same effect see *D. H. L. Co. v. Gottschalk*, *Id.* 641.

The mechanics' lien law [sections 1183 to 1199] was sustained as constitutional in *Quale v. Moon*, 48 Cal. 478, and *Hicks v. Murray*, 43

Cal. 521. And it was not the intention to repeal or abrogate this law by the new constitution. Such law was preserved in full force and effect by section 1, article XXII, of this constitution. *Germania B. & L. Association v. Wagner*, 61 Cal. 349.

A law [section 1191, Code of Civil Procedure], purporting to give the right of lien upon land by virtue of a contract for street improvement, entered into with a "reputed owner," and not with the real owner, is to that extent unconstitutional. *Santa Cruz Rock Pav. Co. v. Lyons*, 117 Cal. 214.

The term "mining claim" has a well defined meaning, and does not include a body of agricultural land upon which the owners open and work a mine. The lien of a laborer employed in the mine would not extend to the entire tract. *Morse v. DeArdo*, 107 Cal. 623.

The section is referred to in *Russ & Sons Co. v. Crichton*, 117 Cal. 699.

SECTION 16. When the term of any officer or commissioner is not provided for in this constitution, the term of such officer or commissioner may be declared by law; and, if not so declared, such officer or commissioner shall hold his position as such officer or commissioner during the pleasure of the authority making the appointment; but in no case shall such term exceed four years.

Const. 1849, Art. XI, Sec. 7.

Where a city ordinance provided that the chief of the fire department should be appointed to hold office one year or until his successor should be appointed and qualified, the term of



such office not being fixed by the constitution or law, and the organic act of the city provided that the trustees may appoint and remove policemen and other subordinate officers as they may deem proper. *Held*, the chief could be removed and another appointed in his stead within the year, and it would seem that the city trustees could not by ordinance limit their right of removal. *Higgins v. Cole*, 100 Cal. 260, and see *People v. Edwards*, *infra*.

The provision that in no case shall such term exceed four years does not preclude a person from holding over until a successor is qualified, but merely limits the term for which a person can be elected or appointed. *People v. Edwards*, 93 Cal. 153; citing *People v. Hammond*, 66 Cal. 654.

The provisions of Political Code [Secs. 3004 *et seq.*] providing for a board of health for San Francisco, violates this provision in establishing the term of office as five years. The members of said board are officers within the meaning of section 7, article XI, constitution [constitution of 1849, amendment, 1863], and a vacancy occurred at the expiration of four years after the appointment. *People v. Perry*, 79 Cal. 105.

Plaintiff was appointed a police officer of Sacramento and was dismissed without written charges being presented against him or a trial. Such charges and trial were provided for in the sixth section of the act of March 6, 1872 [Stats. p. 244], incorporating the city of Sacramento. Section 7, article XI, of the con-

stitution of 1849 was substantially the same as section 16, article XX, of the constitution of 1879. In *People v. Hill*, 7 Cal. 102, it was said: "When the time or term of holding is not fixed, the tenure of the office is at the pleasure of the appointing power. This power of removal cannot be taken away, except by limiting the term." *Smith v. Brown*, 59 Cal. 672, decided on authority of *People v. Hill*, *supra*; see also *People v. Edwards*, 93 Cal. 153. [Sec. 7, Art. XI, Const. as amended in 1863.]

The commissioners to manage the Yosemite valley, provided under the act of April 15, 1880 [Stats. p. 205], and the act of April 2, 1866 [Stats. p. 710], were officers, though it may be admitted that one may sometimes be charged as trustee who is clothed with a power with reference to real estate where the legal title is not vested in him. Said commissioners being officers, their terms of office expired four years after their appointment. *People v. Ashburner*, 55 Cal. 517.

That a school teacher elected by a city board of education without any limitation as to time or duration of term is entitled to hold the position while competent and faithful, and can only be dismissed for violation of rules, incompetency or the like, is dissented to by Fox and McFarland, JJ., as contrary to section 16, article XX, and to the entire spirit of our constitution and legislation. [Secs. 1617, 1793, Political Code.] *Kennedy v. Board of Education*, 82 Cal. 493, 465.

SECTION 17. Eight hours shall constitute a legal day's work on all public work.

SECTION 18. No person shall, on account of sex, be disqualified from entering upon or pursuing any lawful business, vocation or profession.

A city ordinance making it unlawful to sell liquors, etc., in any dance cellar, etc., where females are employed to wait on men, is not unlawful discrimination against persons on account of sex. [Separate opinions affirming and distinguishing *Ex parte* Christiansen, 85 Cal. 208.] *Ex parte* Hayes, 98 Cal. 555. Ordinance of city of Stockton required a saloon license of thirty dollars per quarter, and by another section, for saloons or bars where females are employed as bar tender, solicitor, waitress, etc., a license of one hundred and fifty dollars per month. *Held*, the ordinance is a valid exercise of police power. Commenting on opinions expressed in the case of Maguire, 57 Cal. 610. *Ex parte* Felchlin, 96 Cal. 360.

An ordinance of city and county of San Francisco which declared it a misdemeanor to employ, cause or procure any female to wait or in any manner attend on any person in any dance cellar or place where liquors are used or sold, or for any female to attend or wait upon persons in such places, or for any person owning or having charge of such cellar or place where liquors are sold to suffer or permit any female to remain therein between the hours of 6 P. M. and 6 A. M. (and excepting hotels) is unconstitutional, as discrimi-

nating against females engaging in occupations on account of sex, the business not being declared unlawful. *Matter of Maguire*, 57 Cal. 604.

SECTION 19. Nothing in this constitution shall prevent the legislature from providing, by law, for the payment of the expenses of the convention framing this constitution, including the per diem of the delegates for the full term thereof.

SECTION 20. Elections of the officers provided for by this constitution, except at the election in the year eighteen hundred and seventy-nine, shall be held on the even numbered years next before the expiration of their respective terms. The terms of such officers shall commence on the first Monday after the first day of January next following their election.

Const. 1849, Art. IV, Sec. 39, and Schedule Sec. 8.

Term of office of superior judge commences on first Monday after first of January next following his election. *Bank of Merced v. Rosenthal*, 99 Cal. 39. Affirming same case, 31 Pac. Rep. 849. Justices of the peace were officers to be elected in 1879, and afterwards on even numbered years, and their term of office was shortened one year by section 10 article XXII. *People v. Ransom*, 58 Cal. 560, and see *People v. Harvey*, *Id.* 337 as to school director, and *Wood v. Election Commissioners*, *Id.* 561. Justices of the peace are judicial officers and are included in section 10 of article XXII. *McGrew v. Mayor of San Jose*, 55 Cal. 611.

The county clerk of San Francisco elected

in September 1879, was entitled to take his office on the first Monday in December of that year under the provisions of the "consolidation act." The officers whose terms are by this section required to commence in January succeeding their election, are not the county and municipal officers mentioned in section 5, article XI, and whose terms the legislature is expressly directed to fix. *In re Stuart*, 53 Cal. 745.

The section is referred to in *People v. Pendegast*, 96 Cal. 291, to the effect that state senators are to be elected in even numbered years, from the odd numbered districts in 1892, and from even numbered districts in 1894. [Stats. 1891, p. 71, Sec. 4.]

The section is referred to in holding that a county officer is entitled to compensation for services between the date on which it may be declared his term of office ceases and the subsequent date upon which his successor qualifies. *Dillon v. Bicknell*, 116 Cal. 112.

## ARTICLE XXI.

### BOUNDARY.

SECTION 1. The boundary of the state of California shall be as follows: Commencing at the point of intersection of the forty-second degree of north latitude with the one hundred and twentieth degree of longitude west from Greenwich, and running south on the line of said one hundred and twentieth degree of west longitude until it intersects the thirty-ninth degree of north latitude; thence running in a straight line, in a southeasterly direction, to the river Colorado, at a point where

it intersects the thirty-fifth degree of north latitude; thence down the middle of the channel of said river to the boundary line between the United States and Mexico, as established by the treaty of May thirtieth, one thousand eight hundred and forty-eight; thence running west and along said boundary line to the Pacific ocean, and extending therein three English miles; thence running in a northwesterly direction, and following the direction of the Pacific coast to the forty-second degree of north latitude; thence on the line of said forty-second degree of north latitude to the place of beginning. Also, including all the islands, harbors and bays along and adjacent to the coast.

Const. 1849, Art. XII, Sec. 1.

## ARTICLE XXII.

### SCHEDULE.

That no inconvenience may arise from the alterations and amendments in the constitution of this state, and to carry the same into complete effect, it is hereby ordained and declared:

SECTION 1. That all laws in force at the adoption of this constitution, not inconsistent therewith, shall remain in full force and effect until altered or repealed by the legislature; and all rights, actions, prosecutions, claims and contracts of the state, counties, individuals, or bodies corporate, not inconsistent therewith, shall continue to be as valid as if this constitution had not been adopted. The provisions of all laws which are inconsistent with this constitution shall cease upon the adoption thereof, except that all laws which are inconsistent with such provisions of this constitution as require legislation to enforce them, shall remain in full force until the first day of July, eighteen hundred and eighty, unless sooner altered or repealed by the legislature.

Const. 1849, *Schedule Arts. 1, 3.*

The act of the legislature 1871-2 [Stats. p. 533], requiring plaintiffs in actions for slander to file an undertaking with sureties, was not repealed by the constitution of 1879. *Smith v. McDermot*, 93 Cal. 421.

The effect of this section was, by a single comprehensive provision, to preserve and adopt for the courts created by the new constitution the statutory procedure that was then existing with reference to the courts which were by that instrument abolished, and to authorize that procedure in all rights of action that were to be determined under the new constitution. *Wickersham v. Brittan*, 93 Cal. 34, 40.

The act of March 25, 1874 [Stats. p. 614], defining powers and duties of board of education of Nevada school district, was valid when enacted, there being then no prohibition against special or local laws, and was not repealed by the constitution of 1879. *Nevada School District v. Shoecraft*, 88 Cal. 372.

The act of March 29, 1870 [Stats. p. 438], relating to fees of county and township officers, did not cease to be operative on July 1, 1880, and the county recorder of San Luis Obispo county, whose term expired January 1, 1885, was entitled to receive the fees provided in that act during his term. *San Luis Obispo Co. v. Darke*, 76 Cal. 92.

The adoption of this constitution did not *propria vigore* repeal or displace all the statutes of the state theretofore in force. It repealed some of them and saved others, and it

points out, in its own terms, the effect which its adoption should have upon existing statutes. The county clerk of San Francisco, elected in September, 1879, was entitled to take his office on the first Monday in December, 1879, in accordance with the provisions of the "consolidation act" of said city and county. *In re Stuart*, 53 Cal. 746.

This section is referred to in dissenting opinion of McKinstry, J., in *Donahue v. Graham*, 61 Cal. 279; *S. V. W. W. v. San Francisco*, 61 Cal. 3, where it was held that the act of 1858, establishing a commission to fix water rates in San Francisco, was superseded by section 1, article XIV, and in *Barnhart v. Fulkerth*, 59 Cal. 130, where it was held that a motion for change of venue should have been granted in accordance with the law at the time it was made; and in matter of Maguire, 57 Cal. 604, where it is held that section 18, article XX annulled section 306, Penal Code, and ordinance of San Francisco against employment of females in drinking places, and in *Ewing v. Oroville M. Co.*, 56 Cal., 649, where it is held that section 11, article XII repealed section 359, Civil Code, relating to corporations; and in *McDonald v. Patterson*, 54 Cal. 247.

It was competent for the legislature, prior to 1879, to prescribe the form of complaint to be used in an action for the collection of delinquent city taxes, and the charter of the city of Stockton, of 1872, prescribing such form, is not obnoxious to anything contained in section 6, article XI, of constitution of 1879, and re-



maintained in force. *City of Stockton v. Ins. Co.*, 73 Cal. 621.

The provisions of section 13, article XI, of this constitution are prospective, and refer to the legislature created by this instrument. The act of March 25, 1872 [Stats. p. 546], creating a board of commissioners of the funded debt of Sacramento, and requiring the trustees of the city, in levying a special tax, to be governed by the written request of the commissioners, is not inconsistent with this constitution, and was not repealed by it. *Commissioners v. Trustees*, 71 Cal. 310.

The act of March 30, 1874 [Stats. p. 911], providing for the punishment of misconduct in office, and vesting jurisdiction to try such offense in the district court became inoperative on the 1st July, 1880, when said courts went out of existence. Waiving this, said act was repealed by section 184 of county government act of 1883. [Stats. p. 299.] *Fraser v. Alexander*, 75 Cal. 147.

By the act of March 30, 1878 [Stats. p. 645], the mayor and council of Los Angeles were authorized to provide by ordinance for the licensing, regulating, suppressing, etc., of hawkers, peddlers, etc.; to fix amount of license tax and enforce payment. Neither said statute nor an ordinance passed in pursuance of it were abrogated by the constitution. *Ex parte Ah Toy*, 57 Cal. 92.

The law existing when this constitution went into effect, regulating salary of clerk of Supreme Court, was not inconsistent with the constitu-

tion, and was not repealed by it. The same law exists against increasing or diminishing the salary of the incumbent as will exist against increasing or diminishing the salary of his successor during his incumbency. [Section 14, article VI, constitution.] The legislature by the amendment of 1881 to section 755, Political Code, did not decrease the salary of the incumbent. *Gross v. Kenfield*, 57 Cal. 627.

The street law of San Francisco, of 1872, which did not require an assessment to be levied and collected prior to the contract for doing the work, was repealed by section 19, article XI. And when that section was amended, the former law was not thereby revived, but said work must be done under the general law of 1885. *Thomason v. Ruggles*, 69 Cal. 465. But see dissenting opinions in same case.

It seems that the act of April 24, 1862 [Stats. p. 341], amending the charter of Oakland, and authorizing that city by ordinance to require a license to be procured by every person who at a fixed place of business sells any goods, wares or merchandise, and affix a penalty for a refusal to procure the same, was not repealed by the constitution. *Ex parte Mount*, 66 Cal. 448.

The act of April 1, 1877 [Stats. p. 953], in relation to the house of correction in San Francisco is not repealed by constitution of 1879, and it is applicable to the Superior Courts. *Ex parte Flood*, 64 Cal. 251.

It was not the intention of the constitution to repeal sections 1183 to 1190, Code of Civil Procedure, concerning liens of mechanics, and such law is continued in force. *Germania B. & L. Asso. v. Wagner*, 61 Cal. 349. See *Latson v. Nelson*, XI Pac. L. J. 589.

The license tax for selling merchandise at a fixed place of business, provided for by section 3360, Political Code, prior to the present constitution, was a tax prohibited by section 12, article XI, and section 3360 became inoperative upon the adoption of the constitution. *McKee* dissenting, *People v. Martin*, 60 Cal. 153.

The act of March 27, 1878 [Stats. p. 574], to regulate fees and salaries in Los Angeles county, provided that certain officers of the county should receive salaries for their compensation, and that all fees collected should be paid into the county treasury, but this provision of the act should not affect the then incumbents of said offices. *Held*, that the act was a perfect law and was in force at the adoption of the constitution—the proviso that it should not affect certain persons then in office related only to a *status*, but did not postpone the taking effect of the act itself. [This case is to be distinguished from *Speegle v. Joy*, 60 Cal. 278; *Whiting v. Haggard*, *Id.* 513, and *Peachy v. Supervisors*, 59 Cal. 548, in which cases the acts referred to were not to take effect until a date subsequent to the date of the taking effect of this constitution.] *County of Los Angeles v. Lamb*, 61 Cal. 196.

An act passed March 26, 1878 [Stats p. 547],

in relation to certain officers in Plumas county, portions of which act were, by its terms, not to take effect until March, 1880, never did take effect as to such portions. A law which could not take effect until after the adoption of the constitution, necessarily was not in effect at its adoption. *People v. Whiting*, 64 Cal. 67. To same effect see *Speegle v. Joy*, 60 Cal. 278; *Peachy v. Supervisors*, 59 Cal. 548.

Section 1552, Political Code, relative to salary of county superintendent of schools, was a general statutory provision when the constitution went into effect, and the special act of March 9, 1878 [Stats. p. 204], relative to salary of such office in Calaveras county, and which by its own terms was not to go into effect until March, 1880, never did go into effect because of the adoption of the constitution. *Peachy v. Supervisors*, 59 Cal. 548.

Referred to in dissenting opinion of Justice Harrison in *McClatchy v. Superior Court*, 119 Cal. 428, a case of contempt by newspaper publication.

The consolidation act of San Francisco was not repealed by the constitution of 1879. [*In re Stuart*, 53 Cal. 746; *Wood v. Board of Election Commissioners*, 58 Cal. 561; *In re Guerrero*, 69 Cal. 88; *Kahn v. Sutro*, 114 Cal. 318.] *People v. Babcock*, 114 Cal. 559.

SECTION 2. That all recognizances, obligations, and all other instruments entered into or executed before the adoption of this constitution, to this state, or to any subdivision thereof, or any municipal-

ity therein, and all fines, taxes, penalties and forfeitures due or owing to this state, or any subdivision or municipality thereof, and all writs, prosecutions, actions and causes of action, except as herein otherwise provided, shall continue and remain unaffected by the adoption of this constitution. All indictments or informations which shall have been found, or may hereafter be found, for any crime or offense committed before this constitution takes effect, may be proceeded upon as if no change had taken place, except as otherwise provided in this constitution.

SECTION 3. All courts now existing, save justices' and police courts, are hereby abolished; and all records, books, papers and proceedings from such courts, as are abolished by this constitution, shall be transferred on the first day of January, eighteen hundred and eighty, to the courts provided for in this constitution; and the courts to which the same are thus transferred shall have the same power and jurisdiction over them as if they had been in the first instance commenced, filed or lodged therein.

The Superior Court of city and county of San Francisco is the constitutional successor of the municipal criminal court. *Ex parte Lizzie Williams*, 87 Cal. 78.

An action brought in the District Court in San Francisco, prior to adoption of this constitution, to foreclose a mortgage on lands in Fresno county, was succeeded to by the Superior Court in and for San Francisco, and its decree of foreclosure was valid. The provision of the present constitution, requiring such actions to be brought in the county where the land affected thereby is situated, is prospective. *Watt v. Wright*, 66 Cal. 202.

The Superior Court of San Francisco succeeded to an action pending in the District Court of San Francisco at the time of the adoption of this constitution, although the action was for recovery of possession of land situate in Sonoma county. Prior to the adoption of this constitution said action was properly commenced in said District Court, *Gurnee v. Superior Court*, 58 Cal. 88; approved in *S. F. Sav. U. v. Abbott*, 59 Cal. 400.

At the time the constitution went into effect, January 1, 1880, an appeal from city criminal court was pending in the County Court. The Superior Court afterwards affirmed the judgment and issued its bench warrant for the arrest of the defendant. *Held*, the court had power to issue the warrant for arrest. *Ex parte Toland*, 54 Cal. 344.

Justices courts were not abolished but expressly continued by the constitution. At the election in 1879 one Topham was elected justice of the peace but did not qualify. The incumbent remained in office, and was himself elected at the following election in 1882, but he also failed to qualify after this election. A vacancy existed under these circumstances, which could have been filled by the supervisors by appointment, but the fact that the jurisdiction of such courts had been enlarged, nor the fact that the supervisors had provided for the election of but one justice where there had formerly been two, did not affect the matter. *French v. Santa Clara County*, 69 Cal. 519, and *In re Guerrero*, 69 Cal. 99.

An action to abate a nuisance being a suit in equity, such suit pending in the District Court at the time of the adoption of this constitution was transferred to the Superior Court. *Learned v. Castle*, 67 Cal. 41.

It seems that misconduct of a county officer committed subsequent to taking effect of this constitution, and which misconduct would have been triable in the District Court under the act of March 30, 1874 [Stats. p. 911], cannot be tried in the Superior Court, said act not having been amended so as to vest the Superior Court with such jurisdiction. *Fraser v. Alexander*, 75 Cal. 147.

The superior judges succeeded to the duty of county judges in the matter of attending to the drawing of jurors, under section 215 Code of Civil Procedure. Said section is not inconsistent with the present constitution except that it names county judges, and with this exception it remained in force. *People v. Gallagher*, 55 Cal. 462. And Superior Court as successor of District Court can make an order to carry into execution a sentence of death imposed by the latter. *People v. Colby*, 54 Cal. 184.

That all the courts except justice and police were abolished and all papers, etc., transferred to Superior Courts. *Ex parte Flood*, 64 Cal. 251.

This section is referred to in dissenting opinion of Thornton, J., in *Cummings v. Conlan*, 66 Cal. 406, as to settlement of statement on motion for new trial. That the word

“found” in connection with information means “filed” in dissenting opinion of Sharpstein, J. in *People v. Campbell* 59 Cal. 254. And in *Cal. F. & M. S. Co. v. S. F.* 60 Cal. 307, to the effect that the Superior Courts had jurisdiction of appeals from justices courts without any new legislation under the new constitution. *Shay v. Superior Court*, 57 Cal. 541, and *Ex parte Toland*, 54 Cal. 344. And succeeded to jurisdiction of cases pending in County Court. *Gurnee v. Superior Court*, 58 Cal. 90. And to drawing jury list. *People v. Gallagher*, 55 Cal. 462. And to make an order carrying into execution a death warrant. *People v. Colby*, 54 Cal. 184.

Justices courts are a part of the judicial system of the state. Those courts were not abolished by the constitution of 1879, but were retained subject to future legislation. As to terms of office in municipalities and in townships. See *Kahn v. Sutro*, 114 Cal. 318.

SECTION 4. The superintendent of printing of the state of California shall, at least thirty days before the first Wednesday in May, A. D. eighteen hundred and seventy-nine, cause to be printed at the state printing office, in pamphlet form, simply stitched, as many copies of this constitution as there are registered voters in this state, and mail one copy thereof to the postoffice address of each registered voter; provided, any copies not called for ten days after reaching their delivery office, shall be subject to general distribution by the several postmasters of the state. The governor shall issue *his proclamation, giving notice of the election for the adoption or rejection of this constitution, at least thirty days before the said first Wednesday*



of May, eighteen hundred and seventy-nine, and the boards of supervisors of the several counties shall cause said proclamation to be made public in their respective counties, and general notice of said election to be given at least fifteen days next before said election.

SECTION 5. The superintendent of printing of the state of California shall at least twenty days before said election, cause to be printed and delivered to the clerk of each county in this state five times the number of properly prepared ballots for said election that there are voters in said respective counties, with the words printed thereon: "For the new constitution." He shall likewise cause to be so printed and delivered to said clerks five times the number of properly prepared ballots for said election that there are voters in said respective counties, with the words printed thereon: "Against the new constitution." The secretary of state is hereby authorized and required to furnish the superintendent of state printing a sufficient quantity of legal ballot paper, now on hand, to carry out the provisions of this section.

SECTION 6. The clerks of the several counties in the state shall, at least five days before said election, cause to be delivered to the inspectors of elections, at each election precinct or polling place in their respective counties, suitable registers, poll-books, forms of return, and an equal number of the aforesaid ballots, which number, in the aggregate, must be ten times greater than the number of voters in the said election precincts or polling places. The returns of the number of votes cast at the presidential election in the year eighteen hundred and seventy-six shall serve as a basis of calculation for this and the preceding section; provided, that the duties in this and the preceding section *imposed upon the clerk of the respective counties shall, in the city and county of San Francisco, be performed by the registrar of voters for said city and county.*

SECTION 7. Every citizen of the United States, entitled by law to vote for members of the assembly in this state, shall be entitled to vote for the adoption or rejection of this constitution.

Const. 1849, Schedule, Sec. 5.

SECTION 8. The officers of the several counties of this state whose duty it is, under the law, to receive and canvass the returns from the several precincts of their respective counties, as well as of the city and county of San Francisco, shall meet at the usual places of meeting for such purposes, on the first Monday after said election. If, at the time of meeting, the returns from each precinct in the county in which the polls were opened have been received, the board must then and there proceed to canvass the returns; but if all the returns have not been received, the canvass must be postponed from time to time until all the returns are received, or until the second Monday after said election, when they shall proceed to make out returns of the votes cast for and against the new constitution; and the proceedings of said boards shall be the same as those prescribed for like boards in the case of an election for governor. Upon the completion of said canvass and returns, the said board shall immediately certify the same, in the usual form, to the governor of the state of California.

SECTION 9. The governor of the state of California shall, as soon as the returns of said election shall be received by him, or within thirty days after said election, in the presence and with the assistance of the controller, treasurer and secretary of state, open and compute all the returns received of votes cast for and against the new constitution. If, by such examination and computation, it is ascertained that a majority of the whole number of votes cast at such election is in favor of such new constitution, the executive of this state shall, by his proclamation, declare such new con-

stitution to be the constitution of the state of California, and that it shall take effect and be in force on the days hereinafter specified.

Const. 1849, Schedule, Sec. 6.

SECTION 10. In order that future elections in this state shall conform to the requirements of this constitution, the terms of all officers elected at the first election under the same shall be, respectively, one year shorter than the terms as fixed by law or by this constitution; and the successors of all such officers shall be elected at the last election before the expiration of the terms as in this section provided. The first officers chosen after the adoption of this constitution, shall be elected at the time and in the manner now provided by law. Judicial officers and the superintendent of public instruction shall be elected at the time and in the manner that state officers are elected.

A police judge is a judicial officer, but he is also a municipal officer, and is not included in this section. *People v. Henry*, 62 Cal. 557.

Justices of the peace are judicial officers, and to be elected in 1879, and afterwards in even numbered years, as provided in section 20, article XX. *People v. Ransom*, 58 Cal. 560. See also *McGrew v. Mayor*, etc., 55 Cal. 611.

The municipal officers other than judicial, of the city and county of San Francisco, were to be elected as provided in the consolidation act of 1866, as amended by act of March 30, 1872 [Stats. p. 729], and are not among the officers included in section 20, article XX, of this constitution. [Sections 5, 7, 8, article XI.] *Desmond v. Dunn*, 55 Cal. 242. A school director was not to be elected in said city in

1880. [Citing *Barton v. Kalloch*, 56 Cal. 95;] *People v. Ransom*, *supra*.

A county clerk of San Francisco, elected in September, 1879, was entitled to take his office in December of same year, under the consolidation act. *In re Stuart*, 53 Cal. 745.

See cases collected under section 9, article XI, and *Gross v. Kenfield*, 57 Cal. 626; *Treadwell v. Yolo County*, 62 Cal. 563.

This section declares that judicial officers shall be elected at the same time and in the same manner as state officers, but there is no requirement that the term of office of such judicial offices as the legislature may authorize to be elected shall be uniform throughout the state. The provisions of section 11, of article VI, that the legislature shall determine the number of the justices of the peace to be elected in townships, cities, and cities and counties, show that it was not intended that the laws relating to this portion of the judicial system should be uniform throughout the state. And the provision of section 11, article IV, that the legislature shall fix by law the powers, duties, etc., of justices of the peace, is limited by subdivision 7, of section 25, of article IV, which prohibits certain local acts, and by section 11, of article I, requiring that laws of a general nature shall have a uniform operation, but the term of office of an officer is entirely distinct from his jurisdiction or duties, and a law of a general nature has a uniform operation, if it affects all the individuals of a class

for which the legislature is authorized to make specific laws. The act of the legislature fixing the term of office of township justices as four years does not apply to the police court of the city and county of San Francisco. *Kahn v. Sütro*, 114 Cal. 318.

SECTION 11. All laws relative to the present judicial system of the state shall be applicable to the judicial system created by this constitution until changed by legislation.

The fee bill of 1876 [Stats. p. 586], applicable to the county of San Diego, so far as it provided for fees to be paid to clerk of District Court, and deposit to be made with him at the commencement of each suit, was a law relating to the judicial system of the state, and was kept in force and made applicable, by the constitution of 1879, to the courts organized thereunder. [Section 1, article XXII.] The act of March 16, 1889 [Stats. p. 232], amending the county government act of 1885, fixed the salary of county clerks and other officers, but as to counties of thirty-first class, made no provision as to the fees to be collected, and did not provide for a deposit to be made to cover fees. Under the former act [1876] the clerk was authorized to require a deposit of not more than ten dollars from plaintiff and three dollars from defendant, and to return to the parties any excess of fees remaining at termination of the action. There was no law requiring him to turn such moneys into the county treasury. It is not due the

county but is due the litigants, respectively. *The People v. Hamilton*, 103 Cal. 488.

The act of March 1, 1878 [Stats. p. 881], vesting in the District Court the power of appointing police commissioners in San Francisco, did not thereby vest a judicial power, and such power did not devolve upon the judges of the Superior Court, and the act was not continued in force by this constitution. *Heinlen v. Sullivan*, 64 Cal. 378.

The act of April 1, 1877, [Stats. p. 953] in relation to the house of correction in San Francisco, was not repealed by this constitution, and its provisions are applicable to the Superior Courts. *Ex parte Flood*, 64 Cal. 251.

Upon organization of Superior Court the judicial system prevailing under the former constitution became so far vested in the new court, that it had power to fix and order the compensation of its stenographer. *Ex parte Reis*, 64 Cal. 233.

And such new court has power to enquire into any election held by any corporate body pursuant to sections 312, 315 Civil Code. The corporate body is the corporation itself, not the board of directors. *Wickersham v. Brittain*, 93 Cal. 34, 40.

The clerk of the Superior Court has the same power to issue execution (without previous order of the court) as had the clerk of the former District Court. *Dorn v. Howe*, 59 Cal. 129.

The law existing as to change of venue [Sec. 170, Code of Civil Procedure], existing at

the time the motion was made, should be pursued. *Barnhart v. Fulkerth*, 59 Cal. 130.

This section, so far as relates to the election and commencement of terms of office, went into effect July 4, 1879. *Gross v. Kenfield*, 57 Cal. 626; *Barton v. Kalloch*, 56 Cal. 99.

County clerks were *ex officio* clerks of the District Court in their respective counties, under the former constitution, and they are *ex officio* clerks of the courts of record, in their respective counties, under the present constitution. *People v. Hamilton*, 103 Cal. 491.

Justices courts are a part of the judicial system of the state and were not abolished by the constitution of 1879, but were continued and made subject to future legislation. As to legislation fixing terms of office of justices in cities and in townships see *Kahn v. Sutro*, 114 Cal. 318.

This section is referred to in *People v. Durrant*, 116 Cal. 195, in connection with section 204 of the Code of Civil Procedure, which latter it is said is not unconstitutional and is but a continuation (as to San Francisco), of the section as it existed prior to adoption of this constitution, except that by amendments it has been made to apply to the present judicial system.

**SECTION 12.** This constitution shall take effect and be in force on and after the fourth day of July, eighteen hundred and seventy-nine, at twelve o'clock meridian, so far as the same relates to the election of all officers, the commencement of their

terms of office, and the meeting of the legislature. In all other respects, and for all other purposes, this constitution shall take effect on the first day of January, eighteen hundred and eighty, at twelve o'clock meridian.

J. P. HOGE,  
President.

Attest:

EDWIN F. SMITH,  
Secretary.





# CONSTITUTION

## OF THE

# STATE OF CALIFORNIA

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*Adopted by the Convention, October tenth, eighteen hundred and forty-nine; ratified by the people November thirteenth, eighteen hundred and forty-nine; proclaimed December twentieth, eighteen hundred and forty-nine, and amended eighteen hundred and fifty-seven, eighteen hundred and sixty-two and eighteen hundred and seventy-one.*

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### PREAMBLE.

We, the people of California, grateful to Almighty God for our freedom, in order to secure its blessings, do establish this constitution.

As to what importance should be attached to the debates in the constitutional convention, see *People v. Coleman*, 4 Cal. 46, as commented upon in *People v. McCreery*, 34 Cal. 452.

The constitution was formed for the purpose of establishing a state government, and does not *ex proprio vigore* create local municipal governments—it assumes such governments are necessary, and provides that they shall be created by the legislature. [Sec. 4, Art. XI.] *People v. Provines*, 34 Cal. 532.

Recent judicial interpretation of provisions inserted in the constitution will be presumed to have been considered by the people in adopting such provision. So held as to jurisdiction of Supreme Court on appeal in contested election cases. It having been decided that the court had jurisdiction in cases where there was no pecuniary compensation, in *Conant v. Conant*, [divorce] 10 Cal. 252, it is held that this exposition of the constitution must have been recognized when section 4, article VI, was amended in 1861-2, and that the words, "in all cases at law," are not limited and restrained by those immediately following. *Knowles v. Yates*, 31 Cal. 83.

Sovereignty is a term used to designate the supreme political authority of an independent nation or state. In this country, this authority is vested in the people, and is exercised through the joint action of their federal and state governments. To the federal government is delegated the exercise of certain rights or powers of sovereignty; and the exercise of all other rights of sovereignty, except as expressly prohibited, is reserved to the people of the respective states, or vested by them in their local governments. *Moore v. Smaw*, and *Fremont v. Flower*, 17 Cal. 199.

In the construction of constitutions, as of inferior laws, the deliberate and long-settled precedents of courts, and the practice and acquiescence of governments and people, should possess controlling weight. *Ferris v. Cooner*, 11 Cal. 176.

The constitution is itself a law, and must be construed by some one. The courts, from the nature of the powers vested in them, must be resorted to for such construction, unless the power is expressly given to some other branch of the government. When the right to determine the extent and effect of a restriction upon the legislature is expressly or by necessary implication confided to the legislature, then the judiciary has no right to interfere with the legislative construction, but the question whether that right is vested in the legislature or in the judiciary, must be decided by the latter. *Nougues v. Douglass*, 7 Cal. 65.

When the language of the constitution is unambiguous, no construction should be given to it in opposition to the express words of the instrument. *Bourland v. Hildreth*, 26 Cal. 161.

When the convention in framing the constitution borrowed provisions from the constitutions of other states, which provisions had already received judicial construction, it is a safe rule to hold that they have been adopted in view of such construction. *People v. Coleman*, 4 Cal. 46.

But even if property rights have grown up under an erroneous decision with regard to the construction of a clause of the constitution, it is better that inconvenience should be submitted to, rather than such decision should stand, and a valuable provision of the fundamental law be obliterated. *San Francisco v. S. V. W. W.*, 48 Cal. 493.

The right of transit through each state, with every species of property known to the constitution of the United States, and recognized by that paramount law, is secured by that instrument to each citizen, and does not depend upon the uncertain and changeable ground of mere casuistry. So held with reference to slaves brought into this state by one who is a mere visitor. In the Matter of Archy, 9 Cal. 147.

A government with no limit but its discretion, is not a constitutional one in the true sense of the term. The end and object of creating a constitution is to limit, classify and direct the powers of the different departments. A constitution is a solemn compact, deliberately and freely entered into by a free people as between themselves, by which they limit the powers of their agents, the powers of majorities and the powers of themselves; that this compact is made in advance, when men are more free from passion and prejudice, etc. There are certain inherent and inalienable rights of human nature that no government can take away, some of which are enumerated in our state constitution, but "this enumeration of rights shall not be construed to impair or deny others retained by the people." That the hardships of particular cases, that will and must arise in the progress of human affairs, under any and all systems of government and law, do in fact constitute the true and stern test of the devotion of a free people to fundamental principles; and to sustain

these fundamental principles, whereon liberty, protection, and society itself are based, is the most conclusive proof of the capacity and fitness of a people for self-government. Per Burnett, J., in *Billings v. Hall*, 7 Cal. 16-19.

## ARTICLE I.

### DECLARATION OF RIGHTS.

SECTION 1. All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property; and pursuing and obtaining safety and happiness.

Against the mechanics' lien law of 1867-8 [Stats. p. 592], it was urged that the same was in violation of rights secured by sections 1, 8, and 21 of article I, because it prevented the owner from contracting with the builder that no lien should be created on the building, and permitted material men to compel the owner to pay more than the contract price. It was urged that the rights of the material men must be controlled by the contract between the owner and the builder. By the court it was held that it did not appear from the record in the case that the asserted liens amounted to the contract price nor that the price had been paid when the action was commenced; that in case of judgment against the owner by a material man the former could deduct the amount of the judgment from the sum due the contractor; that the contractor and owner cannot by their contract deprive the material

man of his right of lien by the contractor agreeing to indemnify the owner against such liens, and that there is no constitutional objection to a statute securing the material man a lien where the aggregate liens do not exceed the contract price. *Whittier v. Wilbur*, 48 Cal. 175.

An ordinance of the city of Sacramento forbidding females being in saloons, billiard rooms, etc., after twelve o'clock, midnight, and forbidding unusual noises, musical instruments, etc., at such times and places, is not unconstitutional. It is not the purpose of the constitution to inhibit all legislation affecting the natural rights of persons, but only such legislation as will tend to their destruction or unreasonable restraint. A large class of prohibitory legislation, including houses of ill fame, boards of health, Sunday laws, etc., commented upon and sustained. *Ex parte Smith and Keating*, 38 Cal. 702.

As to effect in California, of the civil rights bill, see *People v. Washington*, 36 Cal. 658.

It will be presumed that provisions of our constitution have been adopted with a full knowledge of the judicial interpretation which similar provisions in other previous constitutions had uniformly received, and with intent to adopt such interpretation as a principle expressed in the organic law of the state. [*People v. Coleman*, 4 Cal. 50; *Taylor v. Palmer*, 31 Cal. 254.] *People v. Webb*, 38 Cal. 467.

The levy of municipal license taxes upon

business and trades is not unconstitutional. *City of Sacramento v. Crocker*, 16 Cal. 122.

An act of the legislature giving the municipality of San Francisco power to pass an ordinance prohibiting the keeping of cows, swine, etc., within certain limits or in certain numbers, in the city, does not violate the constitutional guarantee of liberty, acquiring property, or pursuit of happiness, but the same is a reasonable exercise of municipal authority. *Ex parte Schrader*, 33 Cal. 279, citing *Ex parte Andrews*, 18 Cal. 679.

A legislative enactment of the state to punish the counterfeiting of money is not repugnant to constitution of United States or acts of congress. *People v. White*, 34 Cal. 183.

With reference to the cession of California to the United States, and the rights of the inhabitants of the territory ceded, it is said, "By the law of nations, independent of treaty stipulations, the cession of territory from one government to another does not impair the rights of the inhabitants to their property. They retain all such rights, and are entitled to protection in them to the same extent as under the former government. \* \* \* Those rights are sacred and inviolable, and the obligation passed to the new government to protect and maintain them." The legal and equitable titles arising from grants by the government of Mexico to lands in California, were property rights which the new government could not violate, but must protect and confirm. *Teschamaker v. Thompson*, 18 Cal.



20, *et seq.*, and authorities there cited. And see, as to these Mexican grants, *Estrada v. Murphy*, 19 Cal. 270; *Lees v. Clark*, 20 *Id.* 421; *Merrill v. Chapman*, 34 *Id.* 253; *Seale v. Ford*, 29 *Id.* 105; *Emeric v. Penniman*, 26 *Id.* 123; *Stevenson v. Bennett*, 35 *Id.* 431; *O'Connell v. Dougherty*, 32 *Id.* 458; *Banks v. Moreno*, 39 *Id.* 236.

The Sunday law of 1861 [Stats. p. 655], prohibiting all persons, with certain exceptions, from keeping their places of business open on Sunday for the transaction of business, is constitutional. *Ex parte Andrews*, 18 Cal. 679. The reasoning in this case is sustained in *In re Linehan*, 72 Cal. 116, and the several cases there cited. But the Sunday law of 1858 was held unconstitutional upon exactly contrary reasoning, the court saying that if the legislature could compel the cessation of legitimate business on one day of the week, it could do so on any other day. "When there is no ground or necessity upon which a principle can rest but a religious one, then the constitution steps in and says that it shall not be enforced by authority of law." Per Burnett, J., *Ex parte Newman*, 9 Cal. 502, Field, J., dissenting.

Property in slaves brought here by a mere visitor is protected during the sojourn of the visitor. In the matter of Archy, 9 Cal. 147.

By the act of April 26, 1858 [Stats. p. 345], for the better protection of settlers on public lands, it was provided that a person ousted from the possession of land in an action at

law, by a person claiming title under a foreign grant, which shall thereafter be rejected, or so located as not to include the land recovered, may have an action against the plaintiff in the former action, and the person in possession of the land, to recover back the possession, together with the rents and profits thereof from the time he was so ousted, and costs and damages by reason of the former action of ejectment. *Held*, that in so far as the act authorized the recovery of the possession, or rents or profits from the claimant under a Mexican grant of a definite quantity to be located within a larger tract, it is unconstitutional. The claimant under such grant had the right of possession of all within the larger tract as against any mere intruder, and consequently to the rents and profits. *Rich v. Maples*, 33 Cal. 103. See also *Waterman v. Smith*, 13 Cal. 411; *Teschemacher v. Thompson*, 18 Cal. 12, and *Soto v. Kroder*, 19 Cal. 87, besides authorities cited at page 108 in *Rich v. Maples*, as to rights of holders of Mexican grants.

A government with no limits but its own discretion is not a constitutional government in the true sense of the term. Per *Burnett, J.*, in *Billings v. Hall*, 7 Cal. 16.

By the tenth section of act of March 26, 1856 [Stats. p. 54], it was provided that in actions of ejectment under title derived from Mexican or Spanish grants, against actual settlers thereon, the value of improvements and growing crops shall be paid by plaintiff

(if he recovers) to the defendant, or plaintiff must accept the value of the land as found by the jury, and defendant should have six months to make such payment after notice from plaintiff that the latter will accept the same and declines to pay for the improvements; unless the said grants shall have been surveyed, and the boundaries plainly and distinctly marked out, and kept so marked that they could at any time, when improvements were being made on the land, be easily seen and certainly known, and unless said grant and plat and field notes of survey shall have been filed in the office of the county recorder before such improvements shall have been made. *Held*, unconstitutional as to said grants, as imposing obligations upon the owners applicable to a trial, which obligations did not exist under the law at the time the improvements were being made, or prior thereto, and consequently were not known. The act does not discriminate between an innocent and tortuous possession; it applies to past as well as present cases, and takes from a party that which was before rightly his; it divests rights of property vested by laws existing when the property was acquired, and denies the owner his rents and profits accruing prior to the issuance of the patent of this government, which patent is but declaratory of a pre-existing valid right to the land. The right to protect and enjoy property, declared inalienable by the constitution, is not merely a right to protect by individual force, but the

right to protect it by the law of the land, and an act which divests the rights of property vested by laws existing at the time it was acquired, is unconstitutional and void. *Settlers' act. Billings v. Hall*, 7 Cal. 1.

SECTION 2. All political power is inherent in the people. Government is instituted for the protection, security and benefit of the people, and they have the right to alter or reform the same whenever the public good may require it.

SECTION 3. The right of trial by jury shall be secured to all, and remain inviolate forever; but a jury trial may be waived by the parties, in all civil cases, in the manner to be prescribed by law.

Proceedings in a Justice's Court under the act of February 4, 1874 [Stats. p. 50], to protect agriculture and prevent trespass of animals on private property, if regarded as an action at law, are unconstitutional in not providing for a jury trial, and because if *in rem*, such jurisdiction cannot be vested in Justices' Courts. *Young v. Wright*, 52 Cal. 407. Affirmed in *Sutherland v. Sweem*, 53 Cal. 48.

The action of a police magistrate in committing a minor child to the industrial school does not amount to a criminal proceeding, nor a proceeding according to course of common law, and the minor is not entitled to trial by jury. *Ex parte Ah Peen*, 51 Cal. 280.

Under the act concerning jurors [Stats. 1863, p. 630, and 1863-4, p. 462], jurors were required to have sufficient knowledge of the language (English) in which the proceedings were had, except in Monterey, San Luis

Obispo and certain southern counties. *Held*, in a criminal trial in Monterey it was not error for the court on its own motion to excuse six jurors, so long as it does appear that the defendant had a fair trial before an impartial and qualified jury. The act means only that a knowledge of the English language in those counties is not an absolute qualification. *People v. Arceo*, 32 Cal. 42.

A statute authorizing a court to send a cause "at law" to a referee for trial without the consent of all parties to the suit would be unconstitutional. The right to trial by jury in all common law actions is secured by the constitution. *Grim v. Norris*, 19 Cal. 140.

In the condemnation of land for site of state capital at Sacramento, under act of March 29th, 1860 [Stats. p. 128] *Held*, the act was not unconstitutional in providing commissioners to ascertain and assess value of land and damages, and that trial by jury is not secured by the constitution in such proceedings. That the constitution only has reference to civil and criminal cases in which issues of fact are to be tried; that condemnation proceedings are special cases, and jury could only be proper when the court should see proper to frame special issues of fact to be submitted to one. *Koppikus v. State Capitol Commissioners*, 16 Cal. 249. Approved in *Heyneman v. Blake*, 19 Cal. 596, and *Dorsey v. Barry*, 24 Cal. 454.

The legislature alone can determine in

what cases a jury may be waived. *Exline v. Smith*, 5 Cal. 112.

SECTION 4. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this state; and no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.

A witness is competent without any regard to his religious sentiments or convictions. *Fuller v. Fuller*, 17 Cal. 612. For decisions on constitutionality of Sunday law, see note to section 1, article I.

SECTION 5. The privilege of the writ of *habeas corpus* shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require its suspension.

SECTION 6. Excessive bail shall not be required, nor excessive fines imposed; nor shall cruel or unusual punishments be inflicted; nor shall witnesses be unreasonably detained.

SECTION 7. All persons shall be bailable by sufficient sureties, unless for capital offenses when the proof is evident or the presumption great.

The constitutional provision with reference to bail contemplates only those cases in which the party has not been already convicted. *Ex parte Voll*, 41 Cal. 29.

Sections 509, 510 Criminal Practice act, making bail a matter of discretion in capital cases, unless the proof is evident or the presumption great, is in conflict with the consti-

tution; bail is a matter of right in all cases, unless the proof is evident, etc. The presentment of an indictment for a capital offense does of itself furnish a presumption of the guilt of the defendant too great to entitle him to bail as matter of right under the constitution, or as matter of discretion, under the statute. It creates a presumption of guilt for all purposes except a trial before a petit jury. *People v. Tinder*, 19 Cal. 540.

SECTION 8. No person shall be held to answer for a capital or otherwise infamous crime (except in cases of impeachment and in cases of militia when in actual service, and the land and naval forces in time of war, or which this state may keep, with the consent of congress, in time of peace, and in cases of petit larceny, under the regulation of the legislature) unless on presentment or indictment of a grand jury; and, in any trial in any court whatever, the party accused shall be allowed to appear and defend, in person and with counsel, as in civil actions. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use without just compensation.

The recovery of judgment for damages by the owner of land to be taken as a public road does not authorize the removal of his fences and opening the road. The right of way does not vest in the public until the owner has been paid or tendered the damages awarded him. *Brady v. Bronson*, 45 Cal. 640. See also. *Leonis v. Andrews*, 49 Cal. 239; *S. P. R. R.*

Co. v. Wilson, 49 Cal. 396; San Mateo Water Works v. Sharpstein, 50 Cal. 284.

The act of 1868 [Stats. p. 283], concerning roads in San Mateo county, which requires persons claiming damages for land taken in opening public roads, to present their claims within a certain time is not unconstitutional. The legislature may prescribe the procedure by which compensation shall be recovered for the taking of land for public road purposes, but such procedure must not destroy or substantially impair the right itself. *Potter v. Ames*, 43 Cal. 75. An adjoining owner, who dedicates land for public street is entitled to damages for the construction of a railroad on such street; and that he has been awarded such damages because of the construction of one railroad is not sufficient reason for denying him other damages if a second railroad is constructed on the same street. *S. P. R. R. Co. v. Reed et al*, 41 Cal. 256.

The provision that private property shall not be taken for public use without just compensation, is a limitation upon the otherwise unrestrained power of eminent domain, and the subject is not involved in an assessment for street work in San Francisco under the consolidation act of 1863. *Chambers v. Satterlee*, 40 Cal. 513.

The power to take private property for public use extends to the opening of roads leading from main roads in the country to private residences. The legislative designation of "private" to such roads does not make them



less a public necessity than other roads; they are public roads in the sense that any one is privileged to pass over them who has occasion to. All roads are public. Whether a given road will subserve a public purpose is a legislative question. *Sherman v. Buick*, 32 Cal. 242, cited in *Brenham v. Story*, 39 Cal. 179.

In proceedings to condemn land for the use of a water company engaged in supplying the inhabitants of a city with water the court made an *ex parte* order permitting the plaintiff to take possession and use the land during the pendency of the proceedings, upon executing a bond in the sum of ten thousand dollars. *Held*, the order was void, as this was the taking of private property without just compensation simultaneously made. *San Mateo Water Works v. Sharpstein*, 50 Cal. 284. The statute regulating such proceedings must be strictly pursued. *Leonis v. Andrews*, 49 Cal. 239; *S. P. R. R. Co. v. Wilson*, *Id.* 396; *Branan v. Mecklenberg*, *Id.* 672.

If the government, through its agent, enters wrongfully on private property and erects buildings thereon, the owner is entitled to include the value of the buildings in his compensation to be allowed, in proceedings for condemnation thereafter instituted. *The U. S. v. Land in Monterey County*, 47 Cal. 515.

In proceedings for condemnation of land for railroad purposes under the act of 1861 [Stats. p. 607] as amended in 1863 [Stats. p. 610] the court has no jurisdiction to make an order authorizing the petitioner to take pos-

session during pendency of proceedings, for said act does not provide any compensation to the owner for such taking, and said act is unconstitutional. *Cal. P. R. R. Co. v. Cen. P. R. R. Co.*, *Id.* 528; *Davis v. San Leandro R. R. Co.*, *Id.* 517.

The working of mines owned by private individuals for their own private advantage is not a public use. It is not competent for the legislature to authorize the taking of private property for the encouragement of a purely private industry, and section 1238, Code of Civil Procedure, authorizing the condemnation of private property in behalf of tunnels, ditches, flumes, dumping places, etc. for working mines, is unconstitutional, notwithstanding the legislative declaration that the same is a public use. It is a general rule that where there is any doubt whether the use to which the property is proposed to be devoted is of a public or private character, it is a matter to be determined by the legislature, and the courts will not disturb its judgment in this regard, but where there is no foundation for a pretense that the public was to be benefited, it is the duty of the courts to interfere and afford relief. *Con. Channel Co. v. C. P. R. R.*, 51 Cal. 269.

Private property cannot be taken for a public highway without just compensation being made. Benefits from establishing the road cannot be offset against the value of the land. *Ventura County v. Thompson*, 51 Cal. 577.

In action for trespass upon mining ground

and for perpetual injunction against defendants—injunction granted—defendants answered denying all the allegations of the complaint and claimed ownership—the trial resulting in a general verdict for defendants, and judgment for costs. Defendants move to amend the judgment by dissolving the injunction. Motion denied, but the judgment modified so as to permit the defendants to work the ground. After the term expired defendants appealed from the order refusing to dissolve injunction, and, subsequently, upon the defendants giving bond, the judge, at chambers, *ex parte*, made an order directing plaintiffs to give possession, which plaintiffs refused to obey. Then followed an order citing plaintiffs for contempt. *Held*, the order directing plaintiffs to give possession and induction of defendants into possession was in effect to decide the cause *in limine*; the possession was property and could not be disposed of or transferred except in due course of law. *Brennan v. Gaston*, 17 Cal. 374.

Under the power of eminent domain the legislature cannot take the property of one individual and give it to another, nor can private property be taken for public use without just compensation. *Gillan v. Hutchinson*, 16 Cal. 153. The compensation must accompany or precede the taking, and action will not afterwards lie for it. *Bensley v. Mountain Lake Water Co.*, 13 Cal. 307; *Johnson v. Alameda County*, 14 Cal. 107.

A house on fire, endangering other prop-

erty, or houses in its immediate vicinity may be destroyed, if done in good faith, to stop a conflagration without rendering the person doing so personally liable for damages. It is a nuisance which may be lawfully abated, and this is not a taking of private property for public use. *Surocco v. Geary*, 3 Cal. 73; *Dunbar v. Alcalde, etc.*, 1 *Id.* 355.

Land is not "taken" for public use until the last requirement in proceedings for condemnation is performed. *Fox v. W. P. R. R. Co.*, 31 Cal. 538. In case of public road, compensation must accompany or precede taking. *Johnson v. Alameda County*, 14 Cal. 107. And suit against the county afterwards will not lie. *Id.* But injunction will lie to restrain county from using the property. *McCann v. Sierra County*, 7 Cal. 121; *Bensley v. Mountain Lake W. Co.*, 13 *Id.* 307.

The provision of the railroad act of 1863, requiring allowance to be made for benefits to accrue to the person whose land is taken, is not unconstitutional. *San Francisco A. & S. R. R. Co. v. Caldwell*, 31 Cal. 368. Nor is it unconstitutional in providing that the railroad company may take possession during the proceedings for condemnation, upon giving security for damages. *Fox v. W. P. R. R. Co.*, *supra*.

It would not be due process of law to divest the purchaser of mortgaged property of his title by a foreclosure suit to which he was not made a party. *Skinner v. Buck*, 29 Cal. 253.

The courts are not authorized to condemn

private lands for railroad purposes unless it is alleged and shown that the petitioners have endeavored and have been unable to contract for the purchase thereof from the owners. *Contra Costa R. R. Co. v. Moss*, 23 Cal. 324.

The legislature is the conclusive judge as to what is a public use in any given case. A fort is an object of public use, whether it is for the immediate use of the state or United States government. It is not essential that all persons be equally interested in a particular object to constitute it "public." The only test of its admissibility of the power of the state to condemn land for a public use is, that the particular object for which the land is condemned tends to promote the general interest in its relation to any legitimate object of government. Query, whether the federal government can take land within a state for forts, etc., without the sanction of the state, but it can avail itself of the legislative consent of the state for such purpose. *Gilmer v. Lime Point*, 18 Cal. 229.

The word "property," when applied to land embraces all titles, legal or equitable, perfect, or imperfect. *Teschemacher v. Thompson*, 18 Cal. 11.

An act of May 6, 1861 [Stats. p. 293], authorized the guardian of a minor to sell certain real estate of the minor. It did not appoint the person guardian, nor was such person appointed guardian by any court in this state. Said guardian was to convey the property to the purchaser and account for the

proceeds of the sale, "as for any assets in her hands pertaining to said minor and her deed of conveyance was not to be valid unless the sale shall have been confirmed by the probate court, previous to the execution of said deed of conveyance." There was at the time a general law of the state [Stats. 1851, p. 603], providing for the appointment of guardians, requiring bonds, the rendition of accounts, proof of the necessity of sale, and general control by the probate court or judge over the property and proceeds. *Held*, the sale was void, in the absence of appointment of such person as guardian, and independently of constitutional question, the court will not presume the legislature intended such person should act without appointment, without bond, or without general control by the court or probate judge. *Paty v. Smith*, 50 Cal. 153.

The act of April 2, 1866 [Stats. p. 824], purported to validate sales of real estate under order of probate courts, to purchasers in good faith and for valuable consideration as to defects of form, or errors existing in any of the proceedings, saving the rights of grantees, vendees and mortgagees, who had acquired interests or liens prior to the passage of the act under heirs or devisees adversely to such probate sales, and excepting fraud. *Held*, so far as said act attempts to validate judgments or sales of real estate that are void for want of jurisdiction in the court, it is unconstitutional. The legislature can-

not exercise judicial functions, nor deprive any one of property without due process of law. *Pryor v. Downey*, 50 Cal. 388.

A street assessment being invalid by reason of a void resolution of intention of the supervisors of San Francisco cannot be legalized by act of the legislature. The act of March 25, 1874 [Stats. p. 588], to ratify and confirm certain ordinances is void. At best it is an attempt to levy an assessment within a city, which the legislature cannot do. [*Taylor v. Palmer*, 31 Cal. 240; *People v. Lynch*, 51 Cal. 15.] And if the assessments were held otherwise valid, it would result in taking private property without due process of law. *Brady v. King*, 53 Cal. 44.

A bond given in behalf of a railroad company in condemnation proceedings conditioned that the corporation would pay the compensation awarded, and all damages sustained by the owner of the land if they should not be finally taken by the company, is not just compensation, either for the preliminary taking nor for the final taking of the land. Section 1254, Code of Civil Procedure, providing for such undertaking is unconstitutional. *Vilhac v. S. & I. R. R.*, 53 Cal. 208. Affirming *San Mateo W. W. v. Sharpstein*, 50 Cal. 284, and *Sanborn v. Belden*, 51 Cal. 266.

An act of the legislature purporting to validate a street assessment, if valid for any purpose can only be effectual from the time of its enactment and cannot relate back so as to make the assessment valid at the time it was

levied, and an action to enforce the lien, commenced prior to the validating act, cannot be maintained. *Reis v. Graff*, 51 Cal. 86. *People v. Kinsman*, *Id* 92.

Where a person is placed upon trial upon a valid indictment, before a competent court and jury, he is in jeopardy within the meaning of the constitutional provision, and to which he cannot be again subjected, and a discharge of the jury, unless upon consent of the defendant or for some unavoidable reason, is equivalent to an acquittal. *People v. Cage*, 48 Cal. 323.

When a defendant was placed upon trial for manslaughter, and the court discharged the jury because it thought defendant should be prosecuted for murder, he is entitled to plea of twice in jeopardy, if subsequently indicted and placed upon trial for murder. *People v. Hunckeler*, 48 Cal. 331. For citation of numerous authorities under the subject of jeopardy, see *People v. Webb*, 38 Cal. 467-478. Approved in *People v. Horn*, 70 *Id.* 17.

The statute of this state [Sec. 1548, Pen. Code] does not authorize the arrest or detention here of a person as a fugitive from justice, unless a prosecution is pending against such person in the state from which he has fled. Without expressing an authoritative opinion, it is suggested that no reason appears why it is not competent for the legislature to provide for the arrest and detention of a fugitive from justice until his surrender shall be demanded in accordance with the constitution and laws



of the United States. *Ex parte White*, 49 Cal. 433. *Ex parte Cubreth*, *Id.* 436.

It is competent for the legislature to abolish the writ of *ne exeat*. Such writ is not included in section 57, Code of Civil Procedure, nor in the provisions relating to arrest in civil actions. Such a writ is void. *Ex parte Har-ker*, 49 Cal. 465.

An indictment found by a jury summoned as a trial jury, but impaneled as a grand jury, is illegal. *People v. Earnest*, 45 Cal. 29.

Where an acquittal results from a variance between the indictment and the proofs, and the variance is such that a conviction under that indictment is legally impossible, the defendant has not been put in jeopardy, so as to plead his acquittal in bar of a second indictment. *People v. McNealy*, 17 Cal. 333.

Section 273, Criminal Practice Act, providing that a person indicted for crime under a wrong name, and he gives his true name when arraigned, it shall be so entered on the minutes, and the trial proceed under the true name, is not unconstitutional. *People v. Kelly*, 6 Cal. 211.

In pursuance of an act of March 26, 1856 [Stats. p. 48], the board of state prison directors entered into a contract with James M. Estill, by which they leased to him the state prison, grounds and property, and labor of the convicts for a period of five years. Estill was to erect certain improvements, and the state was to pay Estill the sum of ten thousand dollars at the end of every month

during the term. Estill took possession and in May, 1857, assigned his contract to McCauley, retaining the right to draw one-half the monthly payments, and subsequently assigned all his interest. Payments were made under the contract by the state until December, 1857, when further payment was refused. Acts of the legislature passed subsequent to the making of the contract assumed the existence of the contract. *Held*, this was sufficient legislative affirmance of the contract. In pursuance of an act of February 26, 1858 [Stats. pp. 32, 259], the governor dispossessed the assignees of Estill, and by act of April 21, 1858 [Stats. p. 212], a board of examiners was created, by the terms of which act it would be incumbent upon said lessees to present their demands for monthly demands of the money provided by the contract to be paid by the state. *Held*, the law under which the contract was made gave an absolute right to the warrants for these demands, and that such right could not be changed by subsequent legislation making it depend upon the will and discretion of the board of examiners. By act of April 19, 1859 [Stats. p. 377], the act of 1856, under which the contract was entered into, was repealed. *Held*, the contract remained unaffected by such repeal, and that the rights and obligations of the parties to the contract became fixed beyond the reach of legislative power--they were vested interests. The legislature possesses entire control over financial *affairs of the state*. but after making

an appropriation in view of a contemplated contract which is thereafter executed, and funds to meet the appropriation are received into the treasury, it cannot deprive the party with whom it has contracted of such funds by repealing the appropriation. It may not direct any taxation, may repeal all laws relating to collection of revenue, and thus prevent the receipt of funds upon which the appropriation can operate, but the right of the parties remains when such funds are actually received. *McCauley v. Brooks*, 16 Cal. 1. [See also *Montgomery v. Kasson*, *Id.* 194; *Rose v. Estudillo*, 39 Cal. 274. As to validity of the contract, see *State of California v. McCauley*, 15 Cal. 429, and *Beaudry v. Valdez*, 32 Cal. 279.] The state could resume control of the state prison only upon making compensation as in other cases where it is authorized to take private property. *Id.* See also *S. F. & S. J. R. R. v. Mahoney*, 29 *Id.* 117; *Fox v. W. P. R. R. Co.*, 31 Cal. 548, and *Gilmer v. Lime Point*, 18 Cal. 230.

Legislative grants are to be construed liberally in favor of the grantee. *Hyman v. Read*, 13 Cal. 444.

The act of March 26, 1857 [Stats. p. 106], authorizing the taking of hogs damage *feasant*, and holding them until charges and damages are paid by the owner, is, to this extent, valid. The constitutionality of the remaining provisions of the act by which the animals are to be turned over to a constable, and after certain notice sold, and as to the disposition of the

proceeds of sale, not decided. *Rood v. McCargar*, 49 Cal. 117; *Koppikus v. State Capitol Commissioners*, 16 *Id.* 249; *Heyneman v. Blake*, 19 *Id.* 596; *Dorsey v. Barry*, 24 *Id.* 454.

Proceedings to condemn land for use of a railroad company is special case. *S. & C. R. R. Co. v. Galgiani*, 49 Cal. 139; *Dalton v. Water Commissioners*, 49 Cal. 222; *Spencer Creek Water Co. v. Vallejo*, 48 Cal. 70.

In construing section "70, Political Code, as amended in 1878" [amendment 1874 of Sec. 2950, Pol. Code], prohibiting the landing in this state of foreigners who are idiotic, infirm, criminals, lewd women, etc., it is said: "It would be difficult, perhaps impossible, to find in the reports a definition of the terms 'law of the land,' or 'due process of law,' which is accurate, complete, and appropriate under all circumstances, \* \* \* and if it be found that like proceedings have always been recognized as constitutional in England and this country, and if the person who is subjected to them is accorded every reasonable opportunity to defend his individual rights which the nature of the case will admit—the case being one in which the end sought to be attained is lawful—a statute cannot be said to deprive a party of the benefits of due process of law." [Cooley, Const. Lim., 356.] *Ex parte Ah Fook*, 49 Cal. 402.

Considering the right of the state to pass sanitary and police regulations for the purpose of excluding paupers, criminals, etc., it is held that the state cannot impose restrictions

upon commerce with foreign nations, nor forbid nor impose onerous restrictions upon the immigration of persons of good moral character, and who are sound in body and mind. The acts of 1852 [Stats. p. 78] and 1853 [Stats. p. 71], requiring masters of vessels to give bonds or pay sums of money for each passenger, so far as applicable to such persons is unconstitutional. The State v. S. S. Constitution, 42 Cal. 579.

The practice in personal actions, which sanctioned the appointment of an attorney to represent an absent defendant who is alleged to be concealed to avoid service of process, and permitting such defendant to appear personally within six months after judgment to contest such judgment, held not unconstitutional, and sustained as being "due process of law." *Ware v. Robinson*, 9 Cal. 108.

An action did not lie against a county at common law. A statute exempting the property of a county from execution does not impair the obligation of a contract with the county. *Gilman v. Contra Costa County*, 8 Cal. 52. Counties may prosecute and defend actions like individuals. *Placer County v. Astin*, *Id.* 304. The legislature has power to delegate to the voters of a county the selection of a county seat, but cannot delegate its general legislative powers. *Upham v. Supervisors*, *Id.* 379.

Although the legislature may generally dispose of the revenue as it deemes proper, yet a construction of a statute which would impair

the rights of third parties will not be favored without express words requiring it. *People v. Williams*, 8 Cal. 97.

Statutes of limitation affect the remedy and not the right, and a change of the time within which action may be brought does not impair the obligation of contract. The amendatory act of April 11, 1855 [Stats. p. 109], repealed the statute of limitations of April 22, 1850 [Stats. p. 343] eleven days before the expiration of five years from the adoption of that act, and the statute of limitations, therefore, only commences to run from the adoption of the last act. *Billings v. Hall*, 7 Cal. 1.

But the 26th section of act of April 16, 1850 [Stats. p. 249] providing that conveyances of real estate which shall not be recorded as required by that act, shall be void as against any subsequent purchaser in good faith and for value where his own conveyance shall be first recorded, is held constitutional and held to apply to conveyances theretofore as well as thereafter made. *Stafford v. Lick*, 7 Cal. 480, Burnett J., dissenting.

The act consolidating the city and county of San Francisco, April 19, 1856 [Stats. p. 145] is not unconstitutional. There is no constitutional inhibition against incorporating a portion of the inhabitants of a county as a city, or creating a county out of the territory of a city. As a city may, by legislative enactment, spring from the body of a county, being the first subdivision of the territory and political power of the state, there

is no reason in law why it may not be resolved back to its original elements, or why the power that has called this political being into existence may not again destroy it. There is no limitation on the power of the legislature in this respect. *People v. Hill*, 7 Cal 97. But that portion of the consolidation act requiring that the sinking fund created by the act of 1851, should be first exhausted by the redemption of the certificates of stock, before the treasurer should make certain annual payments which had been set apart by said first act, for interest and for sinking fund are unconstitutional, as impairing the obligation of the contract created between the city and her creditors by said act of 1851. *People v. Wood*, 7 Cal. 579. See notes under section 16, article I, this constitution.

The act of February 1, 1855 [Stats. p. 9] for funding the debt of Contra Costa county, does not impair the obligation of the contract. The only effect produced by the act is in the mode and time of payment. *Hunsaker v. Borden*, 5 Cal. 289.

This section is referred to in *Moulton v. Parks*, 64 Cal. 178, in connection with section 14, article I, Constitution 1879; "Private property shall not be taken or damaged," etc.

SECTION 9. Every citizen may freely speak, write and publish his sentiments on all subjects, *being* responsible for the abuse of that right; and *no law* shall be passed to restrain or abridge the *liberty* of speech or of the press. In all criminal prosecutions on indictments for libels, the truth

may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

SECTION 10. The people shall have the right freely to assemble together to consult for the common good, to instruct their representatives, and to petition the legislature for redress of grievances.

SECTION 11. All laws of a general nature shall have a uniform operation.

A city ordinance of Oakland fixing a higher license per quarter upon the business of retailing liquors than upon other occupations having a like amount of sales, is not unconstitutional. This is a branch of the taxing power which is itself discriminating. *Ex parte Hurl*, 49 Cal. 557.

The constitution does not require laws to have a uniform operation, unless they are of a general nature; and whether a law is of a general or special nature depends, in a measure, upon the legislative purpose discernible in the act. *People v. C. P. R. R. Co.*, 43 Cal. 398.

A city license tax graded according to amount of monthly sales, is not unconstitutional. *City of Sacramento v. Crocker*, 16 Cal. 122.

Different fee bills for separate counties were special laws, and not objectionable under this section. *Ryan v. Johnson*, 5 Cal. 87.

*The act of March 14, 1868 [Stats. p. 159] to enlarge the powers of supervisors of San*



Joaquin county, in so far as it authorizes the supervisors of that county to grant to turnpike corporations in that county privileges which are not common to all other similar corporations under the general law, is unconstitutional and void. [San Francisco v. S. V. W. W., 48 Cal. 493.] Waterloo Turnpike Road Co. v. Cole, 51 Cal. 382.

An ordinance of the city of Sacramento prohibiting females from being in saloons, billiard rooms, etc., after twelve o'clock, midnight, held constitutional; and held further, the meaning of the constitution is that general laws must act alike upon all subjects of legislation, or upon all persons who stand in the same category, and it was not intended to prevent legislation which is local or special in its effect. It was not intended that all distinctions founded upon class or sex should be ignored. *Ex parte* Smith and Keating, 38 Cal. 703.

The meaning of the section is that every law shall have a uniform operation upon all the persons or things of any class upon which it purports to take effect, and that it shall not grant to any citizen or class of citizens privileges which, upon the same terms, shall not belong to others. *Brooks v. Hyde*, 37 Cal. 367.

The act of March 28, 1874 [Stats. p. 746] providing for the levy of a tax upon all property in the state for the twenty-fourth and twenty-fifth fiscal years, but making provision for crediting to certain property the tax which had been previously paid thereon

under a void assessment, was nevertheless general and uniform. It did not exempt any property from taxation by crediting what had been already paid. *People v. Latham*, 52 Cal. 598.

The act of 1876 [Stats. p. 82], to establish water rates in San Francisco, is unconstitutional in so far as it adopts a mode of fixing rates different from the mode prescribed by general law. *S. V. W. v. Bryant*, 52 Cal. 132.

An act establishing a statute of limitations as to actions to recover lands in San Francisco, is not unconstitutional. *Brooks v. Hyde*, 37 Cal. 367.

The statute authorizing the taxation of five per cent. upon the judgment against the losing party as costs in civil actions, is not unconstitutional, because applicable only to San Francisco. *Corwin v. Ward*, 35 Cal. 195.

The act appointing a gauger for the port of San Francisco is a special act, and not, therefore, unconstitutional. *Addison v. Saulnier*, 19 Cal. 82.

A special act directing the District Court to transfer a criminal cause to another district for trial, is not unconstitutional. *Smith v. Judge, etc.*, 17 Cal. 551.

This section cannot be applied to special acts. It is not required that special acts should have a uniform operation. *Moore v. Patch*, 12 Cal. 265.

This section is referred to in concurring opinion of *Myrick, J.*, in *Knox v. Los Angeles County*, 58 Cal. 61.

SECTION 12. The military shall be subordinate to the civil power. No standing army shall be kept up by this state in time of peace; and, in time of war, no appropriation for a standing army shall be for a longer time than two years.

The legislature alone can determine when such state of war exists as will authorize the creation of debt to repel invasion as provided in article VIII. The issue of fifteen hundred bonds of the state in the sum of one thousand dollars each to aid in constructing the Central Pacific railroad, and running forty years, is not a violation of the constitution. *People v. Pacheco*, 27 Cal. 177.

SECTION 13. No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, except in the manner to be prescribed by law.

SECTION 14. Representation shall be apportioned according to population.

SECTION 15. No person shall be imprisoned for debt in any civil action, on mesne or final process, unless in cases of fraud; and no person shall be imprisoned for a militia fine in time of peace.

The proceedings distributing an estate in probate are not a civil action within the meaning of the constitution, and disobedience of the order to an executor to pay over the share of a distributee may be punished as contempt. Nor is the amount which the executor is so required to pay over a debt. *Ex parte Smith*, 53 Cal. 204.

An order in a divorce case directing defendant to pay money for alimony, counsel fees,

etc., does not create a debt in the sense that defendant cannot be imprisoned for contempt for disobedience of the order. *Ex parte Perkins*, 18 Cal. 64.

In an action to recover money alleged to have been received by an agent and not turned over, the defendant cannot be arrested or imprisoned in the absence of fraud. In the Matter of Holdforth, 1 Cal. 439, cited in *Ex parte Prader*, 6 *Id.* 240.

SECTION 16. No bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, shall ever be passed.

It has been uniformly held that the right to levy taxes upon different classes of business conducted within the state may be exercised by the state and municipal authorities, and that the same does not impair the obligations of any contract. The rule is that there is no contract not to tax arising from the grant of franchise or privileges for conducting the business of railroading or other enterprises where privileges or franchises are usually granted. See section 13, article XI, for collection of authorities.

The legislature may change a rule of evidence after the contract to which such rule is applicable has been entered into and after suit upon the contract has been commenced. *Himmelman v. Carpentier*, 47 Cal. 42.

The provision of the Penal Code [section 666] that any person convicted a second time of *petit larceny* shall be deemed guilty of a

felony is not *ex post facto* because the first offense was committed before the code went into effect. No additional punishment is imposed upon the first offense; it is the second offense that is punished as felony. *Ex parte Gutierrez*, 45 Cal. 429.

By act of March 18, 1868 [Stats. p. 176], for refunding the debt of San Diego county and providing revenue to meet the demands against the county it was, among other things, provided that a board of commissioners should carefully examine into the legality or illegality of all the unfunded indebtedness of the county, outstanding, and to allow or reject, in whole or in part, any or all of such indebtedness. Upon allowance of any such demands the board was to issue warrants in favor of the claimants for the amounts found legal, which warrants were made payable out of a fund provided for in the act and designated the "Floating Debt Resumption Fund," without interest. And when said fund contained five hundred dollars or more the treasurer should give notice for bids for surrender of said warrants, and in like manner when the funded debt resumption fund contained five hundred dollars or more he should give notice that he would receive bids for the surrender of bonds of the county. Bids for warrants should not be accepted exceeding thirty-five per cent. of the claim, and for bonds, not exceeding fifty per cent. *Held*, that valid warrants drawn by the auditor and presented to the treasurer, and by the latter endorsed "not paid for want

of funds" held by parties prior to the passage of said act, represented part of a recognized indebtedness of the county and it was not competent for the legislature to pass an act which would declare such claims invalid, nor could it authorize a commission to do so. That a creditor could not be compelled to accept another and essentially different mode of payment from that provided by his contract—that is to say by laws existing when he became a creditor of the county, but as no money was provided for the payment of claims not submitted to and passed on by the commission, the holder of such claim was without remedy except to apply to the legislature to provide the means of paying his demand, unless there were funds in the treasury which were raised under the old law, and were by that law designed to pay such demands. The legislature has power to refuse to make provisions to pay such indebtedness in a certain way and may omit to provide any other way, and might even refuse to provide funds to pay any portion of the indebtedness. If the demands against the county are worth more in the market than the county is authorized to pay, the holder need not accept the amount the treasurer is authorized to pay. Such enactments are not unconstitutional as impairing the obligations of a contract. [Rose v. Estudillo, 39 Cal. 270, and cases there cited.] People v. Morse, 43 Cal. 534; see also People v. Wood, 7 Cal. 579.

*That the control of the legislature over muni-*

nicipalities is unlimited except that it cannot require the performance of an act which would impair the obligations of a contract. *San Francisco v. Canavan*, 42 Cal. 541.

That the legislature may establish a particular mode by which alone the holder of county indebtedness may secure payment of his demand, see *Sharp v. Contra Costa County*, 34 Cal. 284.

When a statute is a contract. *People v. Bond*, 10 *Id.* 570.

An act for the funding of the debt of Sacramento, authorizing the issuing of bonds to be delivered in extinguishment of the floating indebtedness and requiring an annual tax to create a sinking fund for the gradual payment of said bonds, creates an inviolable contract when the bonds are accepted by the creditors of the county in pursuance of the act, and the county authorities may be compelled to levy the tax annually for the sinking fund. *English v. Supervisors Sac. County*, 19 Cal. 172. The act of 1858 [Stats. p. 183], funding the floating debt of San Francisco is a contract with its creditors. *Thornton v. Hooper*, 14 Cal. 9.

A special act of the legislature may authorize town trustees to levy a tax for local improvement, in excess of the limit of tax provided in the original act of incorporation. *Kelsey v. Trustees of Nevada*, 18 Cal. 630.

At the time of the rendition and entering of a judgment the law did not allow any time for redemption from sales under execution.

Prior to a sale under the execution the law was changed by allowing six months for redemption. *Held*, the sale was effected by the latter act, and that this was not an *ex post facto* law, the judgment not being a contract in the sense that the legislature might not alter the conditions resulting from a sale to be thereafter made thereunder. *Moore v. Martin*, 38 Cal. 428, and authorities there cited, including *Tuolumne Redemption Co. v. Sedgwick*, 15 Cal. 516, as to redemption under statute, and subsequent equitable redemption from redemptioner.

Citing 1 Kent Com. 455, *Held*, "a retrospective statute" affecting and changing vested rights is very generally conceded in this country, as founded on unconstitutional principles. \* \* \* But this doctrine is not understood to apply to remedial statutes, which may be of a retrospective nature, provided they do not impair contracts or disturb absolute vested rights, and only go to confirm rights already existing, and in furtherance of the remedy by curing defects, and adding to the means for enforcing existing obligations. The act of April 3, 1863 [Stats. p. 165], validating sales by attorneys in fact of married women where the husband had not joined in the execution of the power, is not unconstitutional. Prior to 1863, married women, in this state had no power to constitute an attorney in fact to convey her separate property. *Dentzel v. Waldie*, 30 Cal. 142.

*There is no difference in the inviolability of*



a contract arising from a grant of property to a municipality and a like grant to an individual. A legislative grant is an actual contract, and it cannot be divested or destroyed by any subsequent legislative enactment. *Grogan v. San Francisco*, 18 Cal. 607. See note under section 37, article IV. But it was held in *Meyers v. English*, 9 Cal. 341, that this section refers to contracts between individuals, and not to contracts between the state and individuals.

This court has not decided that a voluntary appropriation, by public act, of property or its proceeds, by a municipal body, when not associated with a contract as part of its obligation or sanction, removes such property or proceeds from control of the municipality or the legislature, or that the terms of the act making the appropriation are unalterable. Even where such appropriation is connected with a trust, the municipality would have the equity of redemption, and could dispose of the subject of the trust subject to the rights of the creditors or of their trustees, or the legislature could authorize such disposition. [*Citing Hart v. Burnett*, 15 Cal. 530; *People v. Supervisors*, 11 *Id.* 206; *Payne & Dewey v. Treadwell*, 16 *Id.* 220.] *City and County of S. F. v. Biedeman*, 17 Cal. 444.

Where the state grants to persons performing the work of reclaiming swamp land one-half of the land reclaimed, and parties enter upon the work in accordance with the act, they acquire a vested right to proceed to the

completion thereof, and a subsequent act attempting to destroy this right is unconstitutional. *Montgomery v. Kasson*, 16 Cal. 196.

The legislature may from time to time change the remedy, but may not materially affect the right. Whenever it so far alters the remedy as to render the right scarcely worth pursuing, it necessarily impairs the obligation of a contract upon which the right is founded. An act which divests the lien of the judgment creditor, exempts the property of the debtor from execution, places it in the hands of trustees with power to sell as they think proper, and compels the creditor to fund his scrip at a less rate of interest, and submit to a delay of twenty years without any guaranty that he will then be paid, and renders his right worthless by withdrawing his remedy, is unconstitutional. *Smith v. Morse*, 2 Cal. 525. Approved in *Thorne v. San Francisco* 4 Cal. 148; *Heydenfeldt v. Hitchcock*, 15 *Id.* 514; *Wheeler v. Miller*, 16 *Id.* 125; *Ellis v. Eastman*, 32 *Id.* 448.

For decisions under Legal Tender Act, see *Belloc v. Davis*, 38 Cal. 254.

SECTION 17. Foreigners who are or who may hereafter become *bona fide* residents of this state shall enjoy the same right in respect to the possession, enjoyment and inheritance of property as native born citizens.

A non-resident alien can acquire property in this state by purchase, but not by descent or other operation of law. *Norris v. Hoyt*, 12 Cal. 217. The statute permitting *bona fide*

resident aliens to inherit is not unconstitutional. The rights of resident aliens may be enlarged by the legislature, but may not be restricted. *State of Cal. v. Rogers*, 13 Cal. 159. Also *Farrell v. Enright*, 12 Cal. 450.

SECTION 18. Neither slavery nor involuntary servitude, unless for the punishment of crime, shall ever be tolerated in this state.

SECTION 19. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable seizures and searches, shall not be violated; and no warrant shall issue, but on probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the persons and things to be seized.

SECTION 20. Treason against the state shall consist only in levying war against it, adhering to its enemies, or giving them aid and comfort. No person shall be convicted of treason, unless on the evidence of two witnesses to the same overt act, or confession in open court.

SECTION 21. This enumeration of rights shall not be construed to impair or deny others retained by the people.

SECTION 22. The legislature shall have no power to make an appropriation, for any purpose whatever, for a longer period than two years.

[This section was added by amendment ratified September 6, 1871.]

## ARTICLE II.

## RIGHT OF SUFFRAGE.

SECTION 1. Every white male citizen of the United States, and every white male citizen of Mexico who shall have elected to become a citizen of the United States, under the treaty of peace exchanged and ratified at Queretaro, on the thirtieth day of May, eighteen hundred and forty-eight, of the age of twenty-one years, who shall have been a resident of the state six months next preceding the election, and the county or district in which he claims his vote thirty days, shall be entitled to vote at all elections which are now or hereafter may be authorized by law; provided that nothing herein contained shall be construed to prevent the legislature, by a two-thirds concurrent vote, from admitting to the right of suffrage Indians or the descendants of Indians, in such special cases as such a proportion of the legislative body may deem just and proper.

The fourteenth amendment to the constitution of the United States does not annul the provision of the state constitution which denies to females the right to vote. Van Valkenberg v. Brown, 43 Cal. 43.

SECTION 2. Electors shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest on the days of election, during their attendance at such election, going to and returning therefrom.

SECTION 3. No elector shall be obliged to perform militia duty on the day of election, except in time of war or public danger.

SECTION 4. For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, nor

The rights of a riparian owner may be taken under power of eminent domain (compensation being made), for the purpose of supplying farming neighborhood with water. *Lux v. Huggin*, 69 Cal. 255.

The use of water appropriated for sale, rental, or distribution is a public use; and the right to collect compensation for use of water to the inhabitants of any city is a franchise which cannot be exercised except by authority of and in the manner prescribed by law. Water appropriated for distribution and sale is *ipso facto* devoted to a public use. Each member of the community, by paying the rate fixed for supplying it has a right to use a reasonable quantity of it, in a reasonable manner. *McCreary v. Beaudry*, 67 Cal. 120. Is a public use. *People v. Stephens*, 62 Cal. 209.

The consolidated city and county government of San Francisco exists under the consolidation act of 1856. Under said act—its charter—it is provided that ordinances upon certain enumerated subjects shall not be effective unless approved by the mayor, or, unless after his veto, nine members of the board shall vote therefor. *Held*, the constitutional requirement for fixing water rates in February of each year is not of that class of acts which requires approval of the mayor. The fixing of rates may be accomplished by a majority vote of the board, and to hold that approval of the mayor was requisite would require nine members of the board to overcome any

[illegible][illegible]

The Commission has also found that the rates fixed by the Water Co. are not reasonable and just under the facts and circumstances shown.

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the first of these is the fact that the

while engaged in the navigation of the waters of this state or of the United States, or of the high seas; nor while a student at any seminary of learning; nor while kept at any almshouse or other asylum, at public expense; nor while confined in any public prison.

The fact of being a soldier in the United States army does not disqualify any one from voting, but no one is entitled to vote unless he possesses the qualifications as to citizenship and residence in the county required by section one of this article. Mere residence or sojourn of such soldier in the state for the requisite period of time does not make him a citizen nor entitle him to vote. People *ex rel.* Orman *v.* Riley, 15 Cal. 49. See also Day *v.* Jones, 31 Cal. 262, and cases there cited.

SECTION 5. No idiot or insane person, or person convicted of any infamous crime, shall be entitled to the privileges of an elector.

SECTION 6. All elections by the people shall be by ballot.

### ARTICLE III.

#### DISTRIBUTION OF POWERS.

SECTION 1. The powers of the government of the state of California shall be divided into three separate departments; the legislative, the executive and judicial; and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any functions appertaining to either of the others, except in the cases hereinafter expressly directed or permitted.

[See notes under section 1, article IV.]

Acts of the legislature attempting to validate judgments or probate orders for sale of

real estate which are void for want of jurisdiction are unconstitutional as an exercise of judicial functions by legislature. *Pryor v. Downey*, 50 Cal. 388.

The act of March 28, 1874 [Stats. p. 755], directed a vote to be taken of the qualified electors of Siskiyou county as to whether a certain portion of Klamath county should be annexed to Siskiyou, and that if the vote was in the affirmative, Klamath county should be abolished and a portion thereof be annexed to Siskiyou and a portion to Humboldt counties. *Held*, in matters of purely local concern, it is competent of the legislature to enact that a statute affecting only a particular locality shall take effect on condition that it is approved by a vote of a majority of the people whom the legislature shall decide are those who are interested in the question. The legal proposition involved is not affected by the fact that only the voters of Siskiyou were required to vote on the question of annexation. There was no apparent delegation of legislative power. *People v. Nally*, 49 Cal. 478.

The article [III] refers to the state government—not to the local governments, which are left to be created [Sec. 4, Art. XI] by the legislature. The cases of *Burgoyne v. Supervisors*, 5 Cal. 9; *People v. Bircham*, 12 *Id.* 50; *Uridias v. Morrill*, 22 *Id.* 474; and *Sander-son's case*, 30 *Id.* 160, as well as numerous intermediate cases are overruled, in so far as *they apply this article to local and municipal governments, and holds that there is no con-*



stitutional objection to the police judge of San Francisco holding and performing the duties of the office of police commissioner, as an *ex officio* office. *People v. Provines*, 34 Cal. 520.

The state being plaintiff in an action against a citizen may, through the legislature, allow a new or additional defense to be pleaded, and such action is not an assumption of judicial powers by the legislature. Such objection might be successfully urged with great if not conclusive force against an act that should attempt to re-open a judgment in a single specified action, or to prescribe the time, place or manner of its trial. The act in question was a general law, applicable to all cases involving the particular defense thereby permitted to be made. *People v. Frisbie*, 26 Cal. 136. And the legislature may, with consent of defendant, change the place of trial from the county in which the indictment is pending. *Smith v. Judge of Twelfth District*, 17 Cal. 548.

There is nothing in this distribution of powers which places either department above the law, or makes either independent of the other. It simply provides that there shall be separate departments, and it is only in a restricted sense that they are independent of each other. Where discretion is vested in terms, or necessarily implied from the nature of the duties to be performed, they are independent of each other, but in no other case. The legislature may pass such laws as it may judge expedient, subject only to the prohibitions of the consti-

tution. If it overstep those limits and attempt to impair the obligation of contracts, or to pass *ex post facto* laws, or grant special acts of incorporation for other than municipal purposes, the judiciary will set aside its legislation and protect the rights it has assailed. *McCauley v. Brooks*, 16 Cal. 39; see also *Smith v. Judge of Twelfth District*, 17 *Id.* 557; *Sharp v. Contra Costa Co.*, 34 *Id.* 290; *Ex parte Andrews*, 18 *Id.* 685; *Cohen v. Wright*, 22 *Id.* 308; *Ex parte Shrader*, 33 *Id.* 281, and the cases therein cited.

## ARTICLE IV.

### LEGISLATIVE DEPARTMENT.

SECTION 1. The legislative power of this state shall be vested in a senate and assembly, which shall be designated the legislature of the state of California, and the enacting clause of every law shall be as follows: "The people of the state of California, represented in senate and assembly, do enact as follows."

The legislature by act of April 9, 1862 [Stats. p. 151], created a commission and authorized it to cut a canal above the mouth of the American river, for the purpose of protecting the city of Sacramento from high water. Thereafter, by reason of said canal, the lands of one Hoagland were greatly damaged by high water. By act of March 11, 1876 [Stats. p. 214], the said Hoagland was authorized to sue Sacramento for his damages. Held, the legislature had no power to create a claim against a municipal corporation without the consent

of those who are to be taxed with its payment. *Hoagland v. Sacramento*, 52 Cal. 142.

The pueblo lands of the town of Santa Barbara were subject to legislative control, and a subsequent approval by the legislature of a defective conveyance by the town authorities of a portion of the pueblo land, was equivalent, in law, to a previous authority to dispose of them. *Thompson v. Thompson*, 52 Cal. 155.

The legislature has power to change the rules of evidence at any time. A depositio<sup>n</sup> which would have been admissible in evidence before the amendment of section 1880, Code of Civil Procedure, in 1874, could not be received in evidence thereafter. *Mitchell v. Hagemeyer*, 51 Cal. 108.

The legislature cannot levy assessments for street improvements in a city, but may authorize the municipal authorities to do so. *Brady v. King*, 53 Cal. 44. *People v. Lynch*, 51 Cal. 15, and cases cited. *Schumacher v. Toberman*, 56 Cal. 511.

The legislature has power to vacate a street in a city, and may commit such authority to the municipality, and may again revoke it, or itself exercise the power. The plenary power of the legislature over the whole domain of streets is well illustrated by the decisions of this court in the litigation concerning Kearney, Second and Beale streets. *Pollack v. S. F. Orphan Asylum*, 48 Cal. 491. See *S. F. v. Canavan*, 42 Cal. 541; *Payne v. Treadwell*, 16 Cal. 233; *People v. San Francisco*, 36 Cal. 595.

*The constitution is not a grant but a limit-*

ation of power, and when any one challenges an act of the legislature as in violation of the constitution, he must point out the particular provision which he claims is violated. The legislature may compel local improvements which it deems beneficial to the people, such as abating nuisances, opening canals, irrigating arid districts, building levees, and may impose local assessments to pay for the same. *Hagar v. Supervisors of Yolo County*, 47 Cal. 223. And those clauses of the constitution which provide that taxation shall be equal and uniform, and prescribe the mode of assessment and the persons by whom assessments shall be made, and that all property shall be taxed, have no application to assessments made for local improvements. *Id.* May authorize the channel of a river to be changed to protect a locality from threatened inundation. *Green v. Swift, Id.* 536. May enact that suits for violation of city ordinance be prosecuted in the name of the people of the state. *Pillsbury v. Brown, Id.* 478. Although the constitution of the state does not prescribe the particular duties of attorney-general, secretary, controller and treasurer, and contains no express limitation upon the powers of the legislature as to the nature of the duties it may impose upon those officers, yet there is an implied limitation, which is to be found in the general character of duties which similar officers had performed in other states before our constitution was adopted. *Love v. Baehr, Id.* 364. The legislature has power in creating an

office to define the duties of the officer by requiring that such duties shall be such as are prescribed by a statute already existing, and referring to such statute for the purpose. *People v. Whipple*, No. 2, *Id.* 592.

The constitution is not a grant but a limitation of powers, and an express enumeration of powers is not an exclusion of others not named unless there are negative terms expressive of the intent to exclude others not named. *Ex parte McCarthy*, 29 Cal. 396.

That the constitution is not a grant but a limitation upon powers of legislation, and that it is competent for the legislature to exercise all powers not forbidden by the constitution or delegated to the general government or prohibited by the constitution of the United States, see *Cohen v. Wright*, 22 Cal. 308; *Hobart v. Supervisors*, 17 Cal. 24; *People v. Judge Twelfth Dist.* *Id.* 548; *Vermule v. Bigler*, 5 *Id.* 23; *People v. Coleman*, 4 *Id.* 46; and such restrictions must appear, either by express terms or by necessary inference. *State v. Rogers*, 13 *Id.* 160.

The legislature has power to change a rule of evidence after a contract to which the rule applies has been made, and after suit has been commenced on the contract. *Himmelman v. Carpentier*, 47 Cal. 42, and may change the mode of trial in a criminal case; *People v. Mortimer*, 46 Cal. 114; but cannot legalize existing pleadings which are substantially defective, without causing them to be amended. *People v. Mariposa County*, 31 Cal. 196.

For the purpose of securing mechanics' liens, the act of 1868 [Stats. p. 589], declaring that persons claiming an interest in lands who knowingly permit buildings or other improvements to be erected thereon without giving notice that they will not be responsible for the cost thereof, shall be deemed to have acquiesced in their erection, is not unconstitutional. *Fuquay v. Stickney*, 41 Cal. 583.

The legislature has power to declare who may be witnesses, and to regulate the production of evidence in the courts of the state. The constitution of the United States does not conflict with the power of the legislature to deny Chinese testimony. [*People v. George Washington*, 36 Cal. 658, overruled.] *People v. Brady*, 40 Cal. 198. Congress has no constitutional authority to legislate concerning rules of evidence administered in courts of this state. *Duffy v. Hobson*, 40 Cal. 240.

A legislative act extending the corporate limits of the city of Santa Rosa, held constitutional although certain lands thereby embraced were used for agricultural purposes and were not essential for municipal purposes. *City of Santa Rosa v. Coulter*, 58 Cal. 537.

That part of the act creating a state board of equalization which makes the controller one of its members, and providing that the governor appoint the other two members, is not unconstitutional. *Savings and Loan Soc. v. Austin*, 46 Cal. 416. *Wallace, C. J.*, and *Niles J.*, dissenting in part.

The act of March 7, 1878 [Stats. p. 181],

for the relief of George Knox, is unconstitutional; Knox was appointed superintendent of irrigation in Los Angeles county in pursuance of an act of March 10, 1874 [Stats. p. 312], but as he was an officer of only such localities or districts as were formed into irrigation districts, he was not a county officer, and he could only be paid from the funds realized from water rates collected from persons supplied with water. [People v. Townsend, 56 Cal. 633.] Knox v. Los Angeles County, 58 Cal. 59.

The legislature can abolish or change an office created by it, and it may extend or abridge the terms of its incumbents at pleasure. It may confer upon the board of fire underwriters — voluntary association — the power to elect a fire commissioner. A change in the membership of the association does not take away its power of appointment, and the constitution does not prohibit the legislature from conferring such power upon such association even though its members are not citizens of the United States nor electors of the city. *In re Bulger*; *In re Merrill*, 45 Cal. 553.

The legislature has no power to declare that improvements made upon public lands of the United States, such as trees and houses which have become part of the realty, may be removed by the person making such improvements, within six months after the lands shall have become the private property of any person. The act of 1868 [Stats. p. 708], giving such right is void, because in conflict

with the act of congress admitting this state into the union. *Collins v. Bartlett*, 44 Cal. 371.

The power of the legislature over provisions for payment by municipalities of claims equitably due from them will not be revised by the courts, unless in exceptional cases. The act of 1870 [Stats. p. 309], providing for the payment by San Francisco of the claim of Patrick Creighton is held valid, although the act under which he rendered his services expressly declared that said city should in no event become liable therefor. *Creighton v. San Francisco*, 42 Cal. 449; and see *McDonald v. Maddux*, 11 Cal. 187; *People v. Supervisors*, *Id.* 206. It is within the power of the legislature to refuse to make provision for the payment of county indebtedness. [*Rose v. Estudillo*, 39 Cal. 270]; *People v. Morse*, 43 Cal. 534.

Municipal corporations are but subordinate subdivisions of the state government, which may be created, altered, or abolished, at the will of the legislature, which may enlarge or restrict their powers, direct the mode and manner of their exercise, and define what acts they may or may not perform, subject, however to the limitation that the legislature cannot direct the performance of an act which will impair the obligation of contract. *San Francisco v. Canavan*, 42 Cal. 541.

The act of March 3, 1870 [Stats. p. 146], requiring the city and county of San Francisco to pay out of its treasury for the service



of the commissioners and certain others employed on the proposed extension of Montgomery street is constitutional. *Sinton v. Ashbury*, 41 Cal. 525. The act of April 1, 1870 [Stats. p. 551], authorizing the city of Stockton to subscribe aid for building a railroad, is constitutional. *S. & V. R. R. Co. v. Stockton*, 41 Cal. 147, and cases there cited.

An act allowing soldiers in the U. S. army to vote elsewhere and requiring the vote to be transmitted to the county of their residence to be canvassed is unconstitutional. [*Bourland v. Hildreth*, 26 Cal. 161]; *Day v. Jones*, 31 Cal. 262.

Legislative power prescribes rules of conduct for the government of the citizen or subject, while judicial power punishes or redresses wrongs growing out of rules previously established. The distinction lies between a rule and a sentence. The legislature as well as the judiciary may determine facts. Whether the determination of a fact is legislative or judicial depends upon the use to which the facts are put when found. The legislature may determine and declare that slaughter houses within certain limits are nuisances. *Ex parte Schrader*, 33 Cal. 279.

A state has no power to impose a toll upon lumber and logs floated down stream from that state into an adjoining state. States cannot regulate commerce between states. *C. R. L. Co. v. Patterson*, 33 Cal. 334.

The legislature could delegate to the municipality of San Francisco power to pass an

ordinance prohibiting the keeping of cows, swine, etc., within certain limits. *Ex parte Schrader*, 33 Cal. 279.

The courts will not review the determination of the legislature in empowering a county to subscribe for stock in a railroad, that such railroad will be a public benefit. *Held*, further, the legislature may compel a county to subscribe and issue bonds for such stock, and levy taxes to pay its bonds. *Napa Valley R. Co. v. Napa County*, 30 Cal. 435.

An act of the legislature will not be pronounced invalid unless clearly and manifestly repugnant to some clause of the constitution. *People v. Sassovich*, 29 Cal. 480. Nor on ground of general policy of the constitution unless such policy is manifestly expressed and not left to general inference. *Pattison v. Supervisors Yuba County*, 13 Cal. 175.

A county may be authorized to fund its debt by issuing interest bearing bonds and taking up its warrants which bear no interest. *Chapman v. Morris*, 28 Cal. 393.

Where retrospective laws have been held void it has been in consequence of impairing or disturbing some vested right. As to act validating conveyances by married women of their separate property, see *Dentzel v. Waldie*, 30 Cal. 141; settlement of estates of deceased persons, see *People v. Senter*, 28 Cal. 506; specific contract act, see *Galland v. Lewis*, 26 Cal. 48 and cases cited; all of which acts have been held remedial and constitutional. Legal tender notes, greenbacks, see *Lick v.*

Faulkner, 25 Cal. 405; *Kierski v. Mathews*, *Id.* 592; *Carpentier v. Atherton*, *Id.* 564; test oath, *Cohen v. Wright*, 22 Cal. 294.

The legislature has power to appoint a commissioner to investigate and report upon an equitable claim of one county against another arising out of the creating of a new county and may compel the county indebted to levy and collect a tax to pay the amount reported by the commissioner to be due. *People v. Alameda County*, 26 Cal. 641.

The act April 26, 1862 [State. p. 462], to protect free white labor against competition with Chinese coolie labor is in violation of the constitution of the United States, giving congress power to regulate commerce with foreign nations. *Lin Sing v. Washburn*, 20 Cal. 534.

The legislature has power to direct a court to transfer an indictment for murder therein, to another district for trial. *Smith v. Judge of Twelfth District*, 17 Cal. 548. And may make the taking effect of local laws dependent upon the will of the voters of a locality—upon a majority or of a few—as in the removal of capitals, court houses, etc. *Hobart v. Supervisors*, *Id.* 24.

A clause in an act containing an unconstitutional provision will vitiate a whole act, if it enter so entirely into the scope and design of the law that it would be impossible to maintain it without the obnoxious provision. *Reed v. Omnibus R. R. Co.*, 33 Cal. 212. And where the main body of the act is unconstitu-

tional a particular clause must also fall, unless the latter is an independent provision, constitutional in itself and capable of enforcement without reference to the body of the act. *Lathrop v. Mills*, 19 Cal. 514.

The legislature may constitutionally prescribe rules of practice in criminal and civil cases; and among these is the provision as to the time and mode of excepting to irregularities of proceedings. The provision that persons held to answer before the grand jury is drawn must make their objections to the grand jury on its being impaneled is sustained. [*People v. Beatty*, 14 Cal. 567.] *People v. Arnold*, 15 Cal. 478.

The legislature cannot exercise judicial functions, and an act providing that no injunction shall issue against commissioners appointed to sell the state's interest within the water line front at San Francisco is unconstitutional. *Guy v. Hermance*, 5 Cal. 74.

The act of April 15, 1852 [Stats. 1850-3, p. 231], in relation to fugitives from labor held constitutional as an exercise of the general police power of the state, and slaves brought into the state prior to the adoption of the constitution and who asserted their freedom could be reclaimed by their owner under said act. *In re Perkins*, 2 Cal. 426.

SECTION 2. The sessions of the legislature shall be biennial and shall commence on the first Monday of December, next ensuing the election of its members, unless the governor of the state shall, in the interim, convene the legislature by proclamation.

No session shall continue longer than one hundred and twenty days. [Amendment ratified Sept. 3, 1862.]

[ORIGINAL SECTION.]

SECTION 2. The sessions of the legislature shall be annual, and shall commence on the first Monday of January, next ensuing the election of its members, unless the governor of the state shall, in the interim, convene the legislature by proclamation.

SECTION 3. The members of the assembly shall be chosen biennially, by the qualified electors of their respective districts, on the first Wednesday in September, unless otherwise ordered by the legislature, and their term of office shall be two years. [Amendment ratified Sept. 3, 1862.]

[ORIGINAL SECTION.]

SECTION 3. The members of the assembly shall be chosen annually, by the qualified electors of their respective districts, on the Tuesday next after the first Monday in November, unless otherwise ordered by the legislature, and their term of office shall be one year.

SECTION 4. Senators and members of assembly shall be duly qualified electors in the respective counties and districts which they represent.

SECTION 5. Senators shall be chosen for the term of four years, at the same time and places as members of the assembly; and no person shall be a member of the senate or assembly who has not been a citizen and inhabitant of the state and of the county or district for which he shall be chosen one year next before his election. [Amendment ratified Sept. 3, 1862.]

[ORIGINAL SECTION.]

SECTION 5. Senators shall be chosen for the term of two years, at the same time and places as members of assembly; and no person shall be a member of the senate or assembly who has not

been a citizen and inhabitant of the state one year, and of the county or district for which he shall be chosen six months next before his election.

SECTION 6. The number of senators shall not be less than one-third nor more than one-half of that of the members of the assembly; and at the first session of the legislature after this section takes effect, the senators shall be divided by lot, as equally as may be, into two classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, so that one-half shall be chosen biennially. [Amendment ratified Sept. 3, 1862.]

[ORIGINAL SECTION.]

SECTION 6. The number of senators shall not be less than one-third nor more than one-half of that of the members of assembly; and at the first session of the legislature after this constitution takes effect, the senators shall be divided by lot as equally as may be, into two classes; the seats of the senators of the first class shall be vacated at the expiration of the first year, so that one-half shall be chosen annually.

SECTION 7. When the number of senators is increased, they shall be apportioned by lot, so as to keep the two classes as nearly equal in number as possible.

SECTION 8. Each house shall choose its own officers, and judge of the qualifications, elections, and returns of its own members.

SECTION 9. A majority of each house shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as each house may provide.

SECTION 10. Each house shall determine the rules of its own proceedings, and may, with the concurrence of two-thirds of all the members elected, expel a member.

SECTION 11. Each house shall keep a journal of its own proceedings, and publish the same; and the yeas and nays of the members of either house on any question shall, at the desire of any three members present, be entered on the journal.

SECTION 12. Members of the legislature shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest, and shall not be subject to any civil process during the session of the legislature, nor for fifteen days next before the commencement and after the termination of each session.

SECTION 13. When vacancies occur in either house, the governor, or the person exercising the functions of the governor, shall issue writs of election to fill such vacancies.

SECTION 14. The doors of each house shall be open, except on such occasions as, in the opinion of the house, may require secrecy.

SECTION 15. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

SECTION 16. Any bill may originate in either house of the legislature, and all bills passed by one house may be amended in the other.

SECTION 17. Every bill which may have passed the legislature shall, before it becomes a law, be presented to the governor. If he approve it, he shall sign it; but if not he shall return it, with his objections, to the house in which it originated, which shall enter the same upon the journal, and proceed to reconsider it. If, after such reconsidera-

tion, it again pass both houses, by yeas and nays, by a majority of two-thirds of the members of each house present, it shall become a law notwithstanding the governor's objections. If any bill shall not be returned within ten days after it shall have been presented to him, (Sundays excepted) the same shall become a law, in like manner as if he had signed it, unless the legislature, by adjournment, prevent such return.

An adjournment of either house from day to day is not such adjournment as would prevent the governor from returning a bill with his objections thereto, within the ten days allowed. If the house to which it is directed be not in session at the time, and it being the last of the ten days within which the bill should be returned, it should be placed beyond the executive control by leaving it with presiding officer, secretary or other suitable officer of the house to which it is directed. *Harpending v. Haight*, 39 Cal. 189.

In computing the ten days within which a bill should be returned, the day on which it is delivered to the governor is excluded. *Iron Mountain Co. v. Haight*, 39 Cal. 540. The decision in *People v. Whitman*, 6 Cal. 659, was predicated on the fact that "Sunday" in the singular was printed in the statute instead of "Sundays." In computing the ten days allowed for return of a bill, the day on which it reaches the governor is to be excluded. *Price v. Whitman*, 8 Cal. 412. See also *Ex parte Newman*, 9 Cal. 522. The case distinguished in *Taylor v. Palmer*, 31 Cal. 245.

*Under this provision, the bill must be*



signed by the governor, if at all, before adjournment of the legislature. In the matter of approving bills the governor acts as a component part of the legislative power. Parol evidence is not admissible to ascertain the motives or inducements prompting the enactment. *Fowler v. Pierce*, 2 Cal. 165; *Harpending v. Haight*, 39 Cal. 202. As to parol evidence generally in testing validity of a statute. *Id.* Also *Sherman v. Storey*, 30 Cal. 253; *Hahn v. Kelley*, 34 *Id.* 424; *O. & V. R. R. v. Plumas Co.*, 37 *Id.* 354; *People v. Burt*, 43 *Id.* 563.

SECTION 18. The assembly shall have the sole power of impeachment and all impeachments shall be tried by the senate. When sitting for that purpose, the senators shall be upon oath or affirmation; and no person shall be convicted without the concurrence of two-thirds of the members present.

The section is referred to in *Morton v. Broderick*, 118 Cal. 483.

SECTION 19. The governor, lieutenant governor, secretary of state, controller, treasurer, attorney general, surveyor general, justices of the Supreme Court, and judges of the District Court, shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall extend only to removal from office and disqualification to hold any office of honor, trust, or profit under the state; but the party convicted or acquitted shall, nevertheless, be liable to indictment, trial, and punishment according to law. All other civil officers shall be tried for misdemeanors in office in such a manner as the legislature may provide.

The impeachment of other officers than

those named is left to be provided for in such courts and in such manner as the legislature shall prescribe. State harbor commissioner may be proceeded against for extortion and neglect in office upon complaint of private citizen, in District Court, under act of March 14, 1853 [Stats. p. 40.] In the matter of John Marks, 45 Cal. 199.

The section is referred to in *Morton v. Broderick*, 118 Cal. 483.

SECTION 20. No senator or member of assembly shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this state which shall have been created or the emoluments of which shall have been increased during such term, except such offices as may be filled by election by the people.

The section does not prohibit a state senator from occupying the office of harbor commissioner, the salary of which office has not been increased during his senatorship.

SECTION 21. No person holding any lucrative office under the United States, or any other power, shall be eligible to any civil office of profit under this state; provided, that officers in the militia to which there is attached no annual salary, or local officers and postmasters whose compensation does not exceed five hundred dollars per annum, shall not be deemed lucrative.

A person who at the time of his election to the office of district judge was acting as inspector of customs of the United States at a salary of \$3.75 per day, under and by virtue of appointment by the collector of the port at *San Francisco*, but which appointment was

never approved by the secretary of the treasury, was not ineligible to said judgeship. *People v. Turner*, 20 Cal. 143. Eligible means capable of being chosen; the subject of election or choice, and a person holding such office as is mentioned in this section at the time of being voted for is ineligible. The word compensation means the income of the office and not the net profits of it. *Searcy v. Grow*, 15 Cal. 118. [See also *People v. Whitman*, 10 *Id.* 38; *Sanders v. Haynes*, 13 *Id.* 146.] And votes given for an ineligible candidate are not to be counted for the next highest candidate. *Id.* See also *People v. Leonard*, 73 Cal. 230.

The office of harbor commissioner of San Francisco, to which there is attached a salary of one thousand dollars per annum, is a lucrative office. A mere *de facto* incumbency of such office would not render the incumbent ineligible to a county office. He must be an incumbent *de jure* to render him ineligible. [*People v. Turner*, 20 Cal. 142.] *Crawford v. Dunbar*, 52 Cal. 36.

SECTION 22. No person who shall be convicted of the embezzlement or defalcation of the public funds of this state shall ever be eligible to any office of honor, trust or profit under this state; and the legislature shall, as soon as practicable, pass a law providing for the punishment of such embezzlement or defalcation as a felony.

SECTION 23. No money shall be drawn from the treasury but in consequence of appropriations made by law. An accurate statement of the receipts and expenditures of the public moneys shall be attached to and published with the laws at every regular session of the legislature.

When no appropriation has been made, mandamus will not lie to compel the controller to draw his warrant for payment of any demand, that is, unless the appropriation therefor has been made either by the constitution or an act of the legislature. *McCauley v. Brooks*, 16 Cal. 11; approved in *Baggett v. Dunn*, 69 Cal. 77. "Not otherwise appropriated," refers to the time of the act in which the phrase is used, or to the appropriation acts of the same legislature, and not to any subsequent legislature, nor to a fund to be afterwards paid into the treasury to be appropriated by a subsequent legislature for the purposes for which such fund is designed. *Baggett v. Dunn*, *supra*. *McCauley v. Brooks* is commented on in *Stratton v. Green*, 45 Cal. 151, and the rule upon the same subject laid down in *Redding v. Bell*, 4 Cal. 333, is adopted, wherein it is held that the act creating the office of state printer and directing the controller to draw his warrants on the treasurer for such sums as may be due the state printer, is not a specific appropriation. It must appear that there is money in the treasury not otherwise appropriated out of which the compensation is required to be paid. See also *English v. Supervisors*, 19 Cal. 184, and cases there cited.

SECTION 24. The members of the legislature shall receive for their services a compensation to be fixed by law, and paid out of the public treasury; but no increase of the compensation shall take effect during the term for which the members of either house shall have been elected.

SECTION 25. Every law enacted by the legislature shall embrace but one object, and that shall be expressed in the title; and no law shall be revised or amended by reference to its title; but in such case the act revised or section amended shall be re-enacted and published at length.

This clause is held to be directory only. *S. F. v. S. V. W. W. Co.*, 54 Cal. 571, citing *Washington v. Page*, 4 Cal. 388; *Pierpont v. Crouch*, 10 *Id.* 315. The act will be valid if the subjects embraced in the same statute and not expressed by the title have congruity or proper connection. *De Witt v. San Francisco*, 2 Cal. 289.

A statute "to regulate fees in office" is not unconstitutional under this section, because it provides, in addition to the fees of the officer, that he shall pay part of the fees of the office into the treasury. *Ream v. Siskiyou Co.*, 36 Cal. 620.

Under this section, if a statute or section of a statute is re-enacted, it is totally inconsistent with the idea that the old statute or section remains in force, or has vitality for any purpose whatever. The re-enactment creates anew the rule of action, and even if there is not the slightest difference in the phraseology of the two, the latter alone can be referred to as the law. The running of statute of limitations would commence with the latest act, and the former act on same subject is absolutely repealed. *Billings v. Harvey*, 6 Cal. 382; *Billings v. Hall*, 7 *Id.* 1; *Nelson v. Nelson*, 6 *Id.* 430.

SECTION 26. No divorce shall be granted by the legislature.

SECTION 27. No lottery shall be allowed by this state, nor shall the sale of lottery tickets be allowed.

SECTION 28. The enumeration of the inhabitants of this state shall be taken, under the direction of the legislature, in the years one thousand eight hundred and fifty-two, and one thousand eight hundred and fifty-five, and at the end of every ten years thereafter; and these enumerations, together with the census that may be taken under the direction of the congress of the United States, in the year one thousand eight hundred and fifty, and every subsequent ten years, shall serve as the basis of representation in both houses of the legislature.

SECTION 29. The number of senators and members of assembly shall, at the first session of the legislature holden after the enumerations herein provided for are made, be fixed by the legislature and apportioned among the several counties and districts to be established by law, according to the number of white inhabitants. The number of members of assembly shall not be less than twenty-four nor more than thirty-six, until the number of inhabitants within this state shall amount to one hundred thousand; and, after that period, in such ratio that the whole number of members of assembly shall never be less than thirty nor more than eighty.

SECTION 30. When a congressional, senatorial or assembly district shall be composed of two or more counties, it shall not be separated by any county belonging to another district. No county shall be divided in forming a congressional, senatorial or assembly district, so as to attach one portion of a county to another county; but the legislature may divide each county into as many congressional, senatorial or assembly districts as such county may by apportionment be entitled to. [Amendment ratified Sept. 3, 1862.]

## [ORIGINAL SECTION.]

SECTION 30. When a congressional, senatorial or assembly district shall be composed of two or more counties, it shall not be separated by any county belonging to another district; and no county shall be divided, in forming a congressional, senatorial or assembly district.

SECTION 31. Corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes. All general laws and special acts passed pursuant to this section may be altered from time to time, or repealed.

For general purpose of the section see *Brooks v. Hyde*, 37 Cal. 379; *Smith v. Judge*, 17 Cal. 552.

The act of 1876 [Stats. p. 82] to establish water rates in San Francisco is unconstitutional in so far as it adopts a mode of fixing rates different from the mode prescribed by general law. *S. V. W. W. v. Bryant*, 52 Cal. 132.

The act of April 23, 1858 [Stats. p. 254], known as the "Ensign Act," granting special privileges to Ensign and his assignees, (*Spring Valley Water Works Co.*) is unconstitutional as special legislation [overruling *Cal. State Tel. Co. v. Alta Tel. Co.*, 22 Cal. 398.] *S. F. v. S. V. W. W.*, 48 Cal. 515.

The state has no proprietary interest in the streets of a city, and the grant of an easement in such streets by the legislature is a franchise only, and does not affect the proprietary title in the land used as streets. The grant of powers to an individual and his assigns when such persons organize themselves into a cor-

poration under the general laws of the state, is a grant to the corporation and not to the individuals. *San Francisco v. S. V. W. W. Co.*, 48 Cal. 493.

The term "municipal" cannot be extended to embrace commercial corporations. *Lowe v. City of Marysville*, 5 Cal. 214.

It is held in *People v. Stanford*, 77 Cal. 371 that this provision relates to the creation of corporations and to powers directly conferred upon them, and does not preclude a corporation duly organized from taking an assignment of a franchise from an individual to whom such franchise has been granted.

Under this section it is said that both the legislature and the people had the power to change the law, in regard to the liability of stockholders, without violating any provision of the constitution of the United States. *McGowan v. McDonald*, 111 Cal. 66.

Where a franchise was granted to certain individuals and their assigns, to supply the inhabitants of a town with water, without any provision that they should incorporate, the grantees of the franchise may thereafter assign to a corporation organized for the purpose of supplying the same town with water, and the purchase of such franchise is within the powers of such corporation. *San Luis Water Co. v. Estrada*, 117 Cal. 176.

This section is referred to in *Murphy v. Pacific Bank*, 119 Cal. 341.



**SECTION 32.** Dues from corporations shall be secured by such individual liability of the corporators and other means as may be prescribed by law.

How far the legislature may regulate the individual liability of stockholders is discussed and held open for future decision, in *Robinson v. Bidwell*, 22 Cal. 379. A legislative act authorizing San Francisco to subscribe for stock in W. P. R. R. Co., and C. P. R. R. Co., provided that such subscription be made upon the condition that the municipality should not be liable for any of the debts of the railroad company and that this provision should be made a part of and be stipulated in all contracts made by the railroad company for the construction, etc., of its road. *Held*, the immunity of the municipality from liability does not exist further than such exemption or immunity can be secured by persons contracting with the company expressly stipulating in their contracts to waive all claims against the municipality. *French v. Teschamaker*, 24 Cal. 519. See also *Larabee v. Baldwin*, 35 Cal. 155.

This and section 36 are considered in *Harmon v. Page*, 62 Cal. 461, together with sections 2, 3, article XII, constitution 1879, and section 322 Civil Code, and it is held that they do not oust a court of equity of jurisdiction (under the circumstances stated) to compel stockholders to pay in for benefit of creditors, the amount subscribed by them. *The two remedies of the creditors are concu-*

rent—in the one case it is constitutional or statutory, in the other equitable.

SECTION 33. The term corporations, as used in this article, shall be construed to include all associations and joint stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships. And all corporations shall have the right to sue and shall be subject to be sued in all courts in like cases as natural persons.

The franchise of a turnpike company cannot be sold under execution issued on a judgment against the corporation. The road does not belong to the corporation. It has only an easement therein. *Wood v. Truckee Turnpike Co.*, 24 Cal. 474.

The formation of banking corporations for the purposes of deposit and loan, which do not issue paper to circulate as money are not prohibited. *Bank v. Hemme O. & L. Co.*, 105 Cal. 377.

SECTION 34. The legislature shall have no power to pass any act granting any charter for banking purposes, but associations may be formed, under general laws, for the deposit of gold and silver, but no such association shall make, issue or put in circulation any bill, check, ticket, certificate, promissory note, or other paper, or the paper of any bank, to circulate as money.

SECTION 35. The legislature of this state shall prohibit by law any person or persons, association, company or corporation from exercising the privilege of banking or creating paper to circulate as money.

SECTION 36. Each stockholder of a corporation or joint-stock association shall be individually and personally liable for his proportion of all its debts and liabilities.

[See notes under section 32.]

An act of the legislature authorizing the formation of corporations whose stockholders would not be liable individually would be unconstitutional; but this provision of the constitution is not self-executing, and requires legislation which will impose the same rate of liability upon all stockholders, and the law must affect all corporations alike. *French v. Teschemaker*, 24 Cal. 518. Persons contracting with a corporation may waive the right to hold stockholders individually liable, and such contract is not prohibited by the constitution. *Id.* See also *Robinson v. Bidwell*, 22 Cal. 388.

A toll road represents a franchise which cannot be sold at forced sale under execution issued against the corporation. *Wood v. Truckee Turnpike Co.*, 24 Cal. 474.

This section is referred to in *Murphy v. Pacific Bank*, 119 Cal. 340.

The legislature could not exempt the stockholders of a banking corporation from liability for any portion of the debts or liabilities of the corporation, in proportion to the amount of his stock; and the act of April 11, 1862 [Stats. p. 199], is unconstitutional, in so far as it attempts such exemption. *McGowan v. McDonald*, 111 Cal. 61.

SECTION 37. It shall be the duty of the legislature to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses in assessments and in contracting debts by such municipal corporations.

An ordinance of city of Oakland imposing a license tax of fifty dollars every ninety days upon business of retailing liquors, is not unconstitutional, and that it is more than is imposed upon other classes of business, does not render it objectionable. The power to fix licenses is a branch of the taxing power, which is itself discriminating. *Ex parte Hurl*, 49 Cal. 557.

So far as municipal corporations are intrusted with subordinate legislative powers for local purposes, they are mere instrumentalities of the state for the convenient administration of government, and their powers are under the entire control of the legislature, to be modified, expanded or taken away at the pleasure of the legislature. But when property becomes vested in such municipality, such property is invested with the security of other private rights, and the title to this property cannot be divested by subsequent legislative enactment. *Grogan v. San Francisco*, 18 Cal. 590. These principles are involved in the "city slip cases," several of which are cited in *Herzo v. San Francisco*, 33 Cal. 140. That as to the administration of municipal affairs, as municipalities are created in this state, the "mode" prescribed by their charters

or incorporating acts, is the "measure of power." See *Zoltman v. San Francisco*, 20 Cal. 96, and *Herzo v. San Francisco*, *supra*.

SECTION 38. In all elections by the legislature the members thereof shall vote *viva voce*, and the votes shall be entered on the journal.

SECTION 39. In order that no inconvenience may result to the public service from the taking effect of the amendments proposed to article IV by the legislature of eighteen hundred and sixty-one, no officer shall be suspended or superseded thereby until the election and qualification of the several officers provided for in said amendments. [New section ratified Sept. 3, 1862.]

## ARTICLE V.

### EXECUTIVE DEPARTMENT.

SECTION 1. The supreme executive power of the state shall be vested in a chief magistrate, who shall be styled the governor of the state of California.

SECTION 2. The governor shall be elected by the qualified electors, at the time and places of voting for members of the assembly, and shall hold his office for four years from and after the first Monday in December subsequent to his election: and until his successor is elected and qualified. [Amendment ratified Sept. 3, 1862.]

[ORIGINAL SECTION.]

SECTION 2. The governor shall be elected by the qualified electors, at the time and places of voting for members of assembly, and shall hold his office two years from the time of his installation, and until his successor shall be qualified.

SECTION 3. No person shall be eligible to the office of governor (except at the first election) who has not been a citizen of the United States and a

resident of this state two years next preceding the election, and attained the age of twenty-five years at the time of said election.

SECTION 4. The returns of every election for governor shall be sealed up and transmitted to the seat of government, directed to the speaker of the assembly, who shall, during the first week of the session, open and publish them in presence of both houses of the legislature. The person having the highest number of votes shall be governor; but in case any two or more have an equal and the highest number of votes, the legislature shall, by joint vote of both houses, choose one of said persons so having an equal and the highest number of votes, for governor.

SECTION 5. The governor shall be commander-in-chief of the militia, the army, and navy of this state.

SECTION 6. He shall transact all executive business with the officers of government, civil and military, and may require information in writing from the officers of the executive department, upon any subject relating to the duties of their respective offices.

SECTION 7. He shall see that the laws are faithfully executed.

SECTION 8. When any office shall, from any cause, become vacant, and no mode is provided by the constitution and law for filling such vacancy, the governor shall have power to fill such vacancy by granting a commission, which shall expire at the end of the next session of the legislature, or at the next election by the people.

There is no vacancy to which the governor can appoint, so long as there is a person in possession of the office who is authorized by the statute or constitution to discharge its

duties until an election or appointment can be regularly had. *People v. Tilton*, 37 Cal. 614. For discussion of the section, see also *People v. Parker*, *Id.* 639. This section only applies to those cases of vacancies, for filling which no other provision has been made by the "constitution and laws," and has no application to cases provided for by the law of 1851. [Stats. 1851 p. 415.] *Wetherbee v. Cazneau*, 20 Cal. 504.

Power to fill an office and power to fill a vacancy are distinct and substantial. *People v. Langdon*, 8 Cal. 1. It was the intention of this section to limit the patronage of the governor. *People v. Mizner*, 7 Cal. 519, where previous decisions under this section are reviewed.

The word vacancy must be taken in the sense in which it is used by the framers of our constitution, and cannot receive a definition from the legislature different from its known signification. The legislature may say how a vacancy may be filled, but cannot determine what shall constitute one. Temporary absence of a judge from the state does not create a vacancy. *People v. Wells*, 2 Cal. 199, and see *People v. Whitman*, 10 Cal. 48.

The section has in view vacancies in office where the governor and senate or legislature have the power of appointment, or where they are elective by the people, and provides accordingly; but such power of the governor is limited by the period when the people or the legislature can elect or appoint, on the arrival

of which his power ceases, and the right of appointment returns to the proper appointing power. The right of the legislature to elect and control the state printer cannot be defeated by any inference in favor of the appointing power of the governor. *People v. Fitch*, 1 Cal. 520.

SECTION 9. He may, on extraordinary occasions, convene the legislature by proclamation, and shall state to both houses, when assembled, the purpose for which they shall have been convened.

SECTION 10. He shall communicate by message to the legislature, at every session, the condition of the state, and recommend such matters as he shall deem expedient.

SECTION 11. In case of a disagreement between the two houses with respect to the time of adjournment, the governor shall have power to adjourn the legislature to such time as he may think proper; provided, it be not beyond the time fixed for the meeting of the next legislature.

SECTION 12. No person shall, while holding any office under the United States, or this state, exercise the office of governor, except as hereinafter expressly provided.

SECTION 13. The governor shall have the power to grant reprieves and pardons after conviction for all offenses except treason and cases of impeachment, upon such conditions and with such restrictions and limitations as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason, he shall have the power to suspend the execution of the sentence until the case shall be reported to the legislature at its next meeting, when the legislature shall either pardon, direct the execution of the sentence, or grant a further reprieve.



He shall communicate to the legislature, at the beginning of every session, every case of reprieve or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the pardon or reprieve.

SECTION 14. There shall be a seal of this state, which shall be kept by the governor, and used by him officially and shall be called "The Great Seal of the State of California."

SECTION 15. All grants and commissions shall be in the name and by the authority of the people of the state of California, sealed with the great seal of the state, signed by the governor, and countersigned by the secretary of state.

SECTION 16. A lieutenant governor shall be elected at the same time and places, and in the same manner as the governor; and his term of office and his qualifications of eligibility shall also be the same. He shall be president of the senate but shall only have a casting vote therein. If, during a vacancy of the office of governor, the lieutenant governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of his office, or be absent from the state, the president of the senate shall act as governor until the vacancy be filled or the disability shall cease.

SECTION 17. In case of the impeachment of the governor, or his removal from office, death, inability to discharge the powers and duties of said office, resignation or absence from the state, the powers and duties of the office shall devolve upon the lieutenant governor for the residue of the term, or until the disability shall cease. But when the governor shall, with the consent of the legislature, be out of the state in time of war, at the head of any military force thereof, he shall continue commander in chief of all the military forces of the state.

SECTION 18. A secretary of state, a controller, a treasurer, an attorney general and a surveyor general shall be elected at the same time and places

and in the same manner as the governor and lieutenant governor, and whose term of office shall be the same as the governor. [Amendment ratified September 3, 1862.]

[ORIGINAL SECTION.]

SECTION 18. A secretary of state, a controller, a treasurer, an attorney general and surveyor general shall be chosen in the manner provided in this constitution; and the term of office and eligibility of each shall be the same as are prescribed for the governor and lieutenant governor.

SECTION 19. The secretary of state shall keep a fair record of the official acts of the legislative and executive departments of the government, and shall, when required, lay the same, and all matters relative thereto, before either branch of the legislature, and shall perform such other duties as may be assigned him by law; and in order that no inconvenience may result to the public service from the taking effect of the amendments proposed to said article V, by the legislature of eighteen hundred and sixty-one, no officer shall be superseded or suspended thereby, until the election and qualification of the several officers provided for in said amendments. [Amendment ratified Sept. 3, 1862.]

[ORIGINAL SECTION.]

SECTION 19. The secretary of state shall be appointed by the governor, by and with the advice and consent of the senate. He shall keep a fair record of the official acts of the legislative and executive departments of the government, and shall, when required, lay the same, and all matters relative thereto, before either branch of the legislature, and shall perform such other duties as shall be assigned him by law.

SECTION 20. The controller, treasurer, attorney general and surveyor general shall be chosen by joint vote of the two houses of the legislature at their first session under this constitution, and

thereafter shall be elected at the same time and places, and in the same manner, as the governor and lieutenant governor.

The obvious policy of the constitution is, that all the elective officers connected with the executive department of the state should be chosen at the same time. An appointment by the governor, of a controller, prior to the general biennial election at which a governor and other state officers are to be elected, could not deprive the people of the right to elect a controller at such election, whatever other effect the appointment might have. *Brooks v. Malony*, 15 Cal. 59.

SECTION 21. The governor, lieutenant governor, secretary of state, controller, treasurer, attorney general and surveyor general shall each, at stated times during their continuance in office, receive for their services a compensation which shall not be increased or diminished during the term for which they shall have been elected; but neither of these officers shall receive for his own use any fees for the performance of his official duties.

The Political Code [section 408] prescribed the duties of the secretary of state, but it also created a board of examiners, and made the governor, attorney general and secretary of state members of the board and fixed a salary to the attorney and secretary for their duties as such members. [Section 684 Political Code, repealed 1880.] *Held*, the legislature may devolve on said officers the performance of services foreign to their office and allow a salary therefor in addition to the salary as such officers. *Melone v. State*, 51 Cal. 549

[affirming *Love v. Baehr*, 47 Cal. 364.] As to controller, *Green v. State*, *Id.* 577. The act creating the board of examiners was constitutional. *Ross v. Whitman*, 6 Cal. 361; act of April 16, 1856 [Stats. p. 100.]

## ARTICLE VI.

### JUDICIAL DEPARTMENT.

SECTION 1. The judicial power of this state shall be vested in a Supreme Court, in district courts, in county courts, in probate courts and in justices of the peace, and in such recorders' and other inferior courts as the legislature may establish in any incorporated city or town. [Amendment ratified September 3, 1862.]

#### [ORIGINAL SECTION.]

SECTION 1. The judicial power of this state shall be vested in a Supreme Court, in district courts, in county courts and in justices of the peace. The legislature may also establish such municipal and other inferior courts as may be deemed necessary.

[Decisions relating to the jurisdiction of the several courts rendered since the adoption of the codes [1873] will be found herein under appropriate sections. The annotated Code of Civil Procedure, published by the code commissioners, sections 33 to 133, and also Parker's Practice Act, contain abundant citations prior to 1873, and, with a few exceptions, it is unnecessary to insert such in this book]

The municipal criminal court in San Francisco, established in 1870 [Stats. p. 528], is a "constitutional" court. The fact that said court does not provide for an appeal to the

county court does not render the act unconstitutional. If the reference to such appeal in section 8, article VI, is self-executing, then the right to appeal exists independent of the statute; if it is not self-executing, then it merely confers upon the county court the right to entertain such appeals when the legislature shall provide the means of exercising it. *People v. Nyland*, 41 Cal. 129.

The power of the judiciary to declare a legislative act unconstitutional should never be exercised except where the conflict between it and the constitution is palpable and incapable of reconciliation. *S. & V. R. R. Co. v. City of Stockton*, 41 Cal. 149.

Section 2, article IV, United States constitution, is a solemn compact between the states, to be enforced by state legislation or by judicial action, and state courts of general original jurisdiction, exercising the usual powers of common law courts, are fully competent to hear and determine all matters and to issue all necessary writs for the arrest and transfer of fugitive criminals to the authorized agents of the state from which they fled, without any special legislation. *Matter of Romaine*, 23 Cal. 585.

The legislature may constitute the mayor of a city *ex officio* justice of the peace. *Uridias v. Morrill*, 22 Cal. 474.

The purpose and effect of article VI of amendments to constitution is to continue the former courts until the courts provided for by the amendments can be organized and officers

elected under laws to be enacted for that purpose. *In re Oliveres*, 21 Cal. 415; *Gillis v. Barnett*, 38 Cal. 393. See also section .19 *infra*.

The legislature can impose no duties upon the judiciary but such as are of a judicial character, and the incorporation of colleges or towns is not *stricti juris* judicial, but ministerial; or rather, under our constitution, a legislative act. If the legislature can delegate such power, it must be to supervisors or some other person or body possessing like functions, and not to a court. [*Burgoyne v. San Francisco*, 5 Cal. 9; *Dickey v. Hurlburt*, *Id.* 343.] Act of March 27, 1850 [Stats. p. 128], to provide for incorporation of towns. *People v. Town of Nevada*, 6 Cal. 144.

Under the power to create such other "inferior courts," *Held*, such courts as are here authorized must be only of inferior, limited and special jurisdiction, and the act of April 5, 1850 [Stats. p. 159], to establish a municipal court in San Francisco to be known as the Superior Court, is unconstitutional in so far as it attempted to confer jurisdiction upon said court beyond the territory in which it was created. *Meyer v. Kalkman*, 6 Cal. 583; overruled in *Hickman v. O'Neil*, 10 *Id.* 294; and see *Kenyon v. Welty*, 20 *Id.* 640; affirmed in *Vassault v. Austin*, 36 *Id.* 696. And as to the municipal court of San Francisco established subsequent to the amendment of 1862, see *Ex parte Stratman*, 39 Cal. 517, where it is suggested that if the question was *res integra* it

might be difficult to maintain that such courts were "inferior," at least within the common law definition. The Superior Court had no jurisdiction in *quo warranto*. *People v. Gill-espie*, 1 Cal. 342.

The judicial power of the United States in admiralty and maritime cases is not exclusive, and the states have power to confer such jurisdiction upon their own courts. *Taylor v. The Columbia*, 5 Cal. 268.

Congress has made the power to naturalize persons judicial, but congress cannot confer jurisdiction upon state courts. The provision of the constitution of the United States giving congress power to establish a uniform rule of naturalization, means that the rule when established shall be exercised by the states. The legislature of this state has given such jurisdiction to the district courts only. *Ex parte Frank Knowles*, 5 Cal. 301.

As to writs of *certiorari* and appeals from state to federal courts, see *Greely v. Townsend*, 25 Cal. 613, overruling *Johnson v. Gordon*, 4 Cal. 368.

SECTION 2. The Supreme Court shall consist of a chief justice and four associate justices. The presence of three justices shall be necessary for the transaction of business, excepting such business as may be done at chambers, and the concurrence of three justices shall be necessary to pronounce a judgment. [Amendment ratified Sept. 3, 1862.]

[ORIGINAL SECTION.]

SECTION 2. The Supreme Court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum.

SECTION 3. The justices of the Supreme Court shall be elected by the qualified electors of the state at special elections to be provided by law, at which elections no officer other than judicial shall be elected, except a superintendent of public instruction. The first election for justices of the Supreme Court shall be held in the year eighteen hundred and sixty-three. The justices shall hold their offices for the term of ten years from the first day of January next after their election, except those elected at the first election, who, at their first meeting, shall so classify themselves by lot, that one justice shall go out of office every two years. The justice having the shortest term to serve shall be the chief justice. [Amendment ratified Sept. 3, 1862.]

[ORIGINAL SECTION.]

SECTION 3. The justices of the Supreme Court shall be elected at the general election, by the qualified electors of the state, and shall hold their office for the term of six years from the first day of January next after their election; provided that the legislature shall, at its first meeting, elect a chief justice and two associate justices of the Supreme Court; by joint vote of both houses, and so classify them that one shall go out of office every two years. After the first election, the senior justice in commission shall be the chief justice.

SECTION 4. The Supreme Court shall have appellate jurisdiction in all cases in equity; also in all cases at law which involve the title or possession of real estate, or the legality of any tax, impost, assessment, toll, or municipal fine, or in which the demand, exclusive of interest, or the value of the property in controversy amounts to three hundred dollars; also in all cases arising in the probate courts; and also in all criminal cases amounting to felony, on questions of law alone. The court shall have power to issue writs of mandamus, certorari, prohibition and habeas corpus, and also all writs necessary or proper to the complete exercise of its



appellate jurisdiction. Each of the justices shall have power to issue writs of *habeas corpus* to any part of the state, upon petition on behalf of any person held in actual custody, and may make such writs returnable before himself or the Supreme Court, or before any District Court or any County Court in the state, or before any judge of said courts. [Amendment ratified Sept. 3, 1862.]

[ORIGINAL SECTION.]

SECTION 4. The Supreme Court shall have appellate jurisdiction in all cases when the matter in dispute exceeds two hundred dollars, when the legality of any tax, toll, or impost, or municipal fine is in question, and in all criminal cases amounting to felony, on questions of law alone. And the said court, and each of the justices thereof, as well as all district and county judges, shall have power to issue writs of *habeas corpus* at the instance of any person held in actual custody. They shall also have power to issue all other writs and process necessary to the exercise of their appellate jurisdiction and shall be conservators of the peace throughout the state.

Proceedings for condemnation of land for railroad purposes are special cases, and that the Supreme Court has appellate jurisdiction in such cases is no longer an open question in this state. *S. & C. R. R. Co. v. Galgiani*, 49 Cal. 139, and cases there cited.

District courts necessarily have jurisdiction in a large class of cases where no money consideration is involved. In *Knowles v. Yates*, 31 Cal. 83, it is held that the words "all cases at law" are not limited by the words immediately following, and as it had been held in *Conant v. Conant* (divorce), 10 Cal. 252, prior to the amendment of this section, that the

amount (then \$200) in controversy, could not be applied to that large class of cases where no money consideration was involved, that construction was deemed to have been taken into consideration by the people when the present amendment was adopted. See also *Day v. Jones*, *Id.* 263. Houghton's appeal, 42 Cal. 35, dissenting opinion of Rhodes, C. J. Appealable and non-appealable orders. *People v. Young*, 31 Cal. 564. *Ketchum v. Crippen*, *Id.* 366.

Cases at law, refers to civil as distinguished from criminal cases. A municipal fine is such as is imposed by the local laws of towns or cities. In prosecutions for illegally collecting toll on a road, the legality of the fine to be imposed is not involved, and the fine imposed, upon conviction in such cases is not a municipal fine. *People v. Johnson*, 30 Cal. 98. Appellate jurisdiction of Supreme Court in criminal proceedings is limited to cases amounting to felony. *Id.*

The Supreme Court has jurisdiction of appeals in criminal cases on questions of law alone, and such question is presented—where the verdict is complained of as being contrary to the evidence—only where there is no evidence to establish the charge, and not where there is evidence tending to prove it. *People v. Smallman*, 55 Cal. 185.

Half-pilotage allowed under the statutes relating to pilots and pilot regulations at *Benicia and Mare Island*, is not a tax, impost, or toll, within this section of the consti-

tution. It is only a compensation for services rendered. *Harrison v. Green*, 18 Cal. 95. So held as to guagers' fees at Port of San Francisco. *Addison v. Saulnier*, 19 Cal. 83.

Under the original section, the Supreme Court had no jurisdiction to issue mandamus or other writs [except *habeas corpus*], unless in aid of and as necessary to their appellate jurisdiction. *Cowell v. Buckalew*, 14 Cal. 641. All writs necessary to the appellate jurisdiction may be issued by this court. *People v. Turner*, 1 *Id.* 144 and 153; *White v. Lightfoot*, *Id.* 347.

The foregoing cases approved in *Milliken v. Huber*, 21 Cal. 169. The change in this jurisdiction will be noted by reference to the amendment of 1862.

The legislature cannot require the Supreme Court to give reasons in writing for its decisions. The constitutional duty of the Supreme Court is discharged by the rendition of its decision. *Houston v. Williams*, 13 Cal. 24.

The "matter in dispute," mentioned in the original section, construed as "the matter for which suit is brought." *Dumpley v. Guindon*, 13 Cal. 28. And the court had no appellate jurisdiction where the amount involved was less than two hundred dollars. *Luther v. Ship Apollo*, 1 Cal. 16.

The legislature has not the power to take away the appellate jurisdiction of the court, but may prescribe the mode in which appeals shall be taken. *Haight v. Gay*, 8 Cal. 297.

SECTION 5. The state shall be divided, by the legislature of eighteen hundred and sixty-three, into fourteen judicial districts, subject to such alteration, from time to time, by a two-thirds vote of all the members elected to both houses, as the public good may require; in each of which there shall be a District Court, and for each of which a district judge shall be elected by the qualified electors of the district at the special judicial elections to be held as provided for the election of justices of the Supreme Court, by section three of this article. The district judges shall hold their offices for the term of six years from the first day of January next after their election. The legislature shall have no power to grant leave of absence to a judicial officer; and any such officer who shall absent himself from the state for upwards of thirty consecutive days shall be deemed to have forfeited his office. [Amendment ratified Sept. 3, 1862.]

[ORIGINAL SECTION.]

SECTION 5. The state shall be divided by the first legislature into a convenient number of districts, subject to such alteration from time to time as the public good may require, for each of which a district judge shall be appointed by the joint vote of the legislature, at its first meeting, who shall hold his office for two years from the first day of January next after his election; after which, said judges shall be elected by the qualified electors of their respective districts, at the general election, and shall hold their office for the term of six years.

The twelfth judicial district was created by act of the legislature, May 15, 1854, and the governor was authorized to appoint a judge for the same to hold until the next general election. The next general election was held in October of the same year, and the appointee *was elected*. *Held*, that his term of office did *not expire* until January, 1861; that a person

elected in September, 1859, was not entitled to succeed him, but a person elected in November, 1860, was so entitled. *Brodie v. Campbell*, 17 Cal. 13.

Under the original section, it is held that judges elected to fill a vacancy, as well as when elected for a new county, hold for full term of six years. The constitution does not fix the commencement of the term, but only its duration. *People v. Burbank*, 12 Cal. 378. To same effect see *People v. Templeton*, *Id.* 394.

A district judge may be authorized by the legislature to hold court in a district other than the one in which he is elected. *People v. McCauley*, 1 Cal. 380.

SECTION 6. The district courts shall have original jurisdiction in all cases in equity; also, in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand, exclusive of interest or the value of the property in controversy, amounts to three hundred dollars; and also in all criminal cases not otherwise provided for. The district courts and their judges shall have power to issue writs of *habeas corpus*, on petition by or on behalf of any person held in actual custody, in their respective districts. [Amendment ratified Sept. 3, 1862.]

[ORIGINAL SECTION.]

SECTION 6. The district courts shall have original jurisdiction, in law and equity, in all civil cases where the amount in dispute exceeds two hundred dollars, exclusive of interest. In all criminal cases not otherwise provided for, and in all issues of fact joined in the probate courts, their jurisdiction shall be unlimited.

For certain controversies arising out of the administration of estates of deceased persons, and against executors and administrators, to declare and enforce trusts, actions may be brought in the District Court, but the probate court has exclusive jurisdiction of the accounts of executors and administrators, and of the final distribution of estates of deceased persons. *Auguisola v. Arnaz*, 51 Cal. 437, and cases there cited.

An action in the District Court could not be sustained against several stockholders of a corporation for their respective individual liabilities as stockholders for the debts of the corporation when the individual liability of neither of them exceeds three hundred dollars, although the aggregate liabilities of the defendants may exceed that sum. *Derby v. Stevens*, 64 Cal. 287.

"All cases in equity," mentioned in section 564, Code of Civil Procedure, includes only those cases [upon the pleadings or upon appropriate showing by affidavit or other proofs] in which it had been the usage of courts of equity to appoint receivers. This is the meaning conveyed in the decision in *La Societe Francaise v. District Court*, 53 Cal. 495; and the District Court had no jurisdiction to appoint a receiver in an action of ejectment. *Bateman v. Superior Court*, 54 Cal. 285.

The District Court had such jurisdiction in equity as was administered by the high court of *chancery* in England, and consequently

had jurisdiction to construe a will. *Rosenberg v. Frank*, 58 Cal. 387.

The legislature cannot confer upon courts of this state jurisdiction of causes *in rem* which are cognizable in the courts of admiralty. *Crawford v. Bark Caroline Reed*, 42 Cal. 469.

The proceeding under the acts of 1868, 1870, modifying grades of streets in San Francisco, is a "special one," and not a case at law involving the legality of an assessment, and jurisdiction may be conferred upon the county courts to pronounce final judgment on second report of the commissioners. Appeal of Houghton, 42 Cal. 35. "Cases at law," not controlled by words immediately following. Jurisdiction on appeal extends to a large class of cases in which there is no direct money consideration. *Knowlton v. Yates*, 31 Cal. 83; *Day v. Jones*, *Id.* 261.

The collection by a toll-gatherer of a sum in excess of the legal amount of toll fixed by the supervisors, does not involve the question of the legality of a toll. The collection of the excess was an extortion for which the law furnishes a remedy, and the District Court has no jurisdiction of such case. *Brown v. Rice*, 52 Cal. 490.

It is the intention of the constitution to vest jurisdiction in the district courts in cases involving the right of possession of real estate, and it is not enough to entitle them to jurisdiction in any particular case, that the mere fact of possession is involved. (*Holman v.*

Taylor, 31 Cal. 338, explained.] Pollock v. Cummings, 38 Cal. 683. The District Court has jurisdiction in action to recover one-half of partition fence, although the money demand is less than three hundred dollars. Holman v. Taylor, 31 Cal. 338.

Since the amendment in 1862, district courts have no jurisdiction to try issues framed in probate courts. Will of Bowen, 34 Cal. 682.

Where an action was commenced in good faith in the District Court for a sum greater than two hundred dollars, exclusive of interest, that court has jurisdiction though it is necessary to enter a judgment for a sum less than two hundred dollars. Jackson v. Whartenby, 5 Cal. 95. The jurisdiction of district courts where more than two hundred dollars is involved is original and exclusive; jurisdiction of causes involving five hundred dollars cannot be conferred upon justices' courts. Zander v. Coe, *Id.* 230.

The district courts are not given appellate jurisdiction and an act attempting to confer such jurisdiction is void. People v. Peralta, 3 Cal. 379; Caulfield v. Hudson, *Id.* 389.

SECTION 7. There shall be in each of the organized counties of the state a county court, for each of which a county judge shall be elected by the qualified electors of the county at the special judicial elections to be held as provided for the election of justices of the Supreme Court by section three of this article. The county judges shall hold their offices for the term of four years from the first day of January next after their election. Said



courts shall also have power to issue naturalization papers. In the city and county of San Francisco the legislature may separate the office of probate judge from that of county judge, and may provide for the election of a probate judge, who shall hold his office for the term of four years. [Amendment ratified September 3, 1862.]

[ORIGINAL SECTION.]

SECTION 7. The legislature shall provide for the election, by the people, of a clerk of the Supreme Court, and county clerks, district attorneys, sheriffs, coroners and other necessary officers; and shall fix by law their duties and compensation. County clerks shall be *ex officio* clerks of the district courts in and for their respective counties.

Under the original section the term of office of district attorney was not fixed, but it is required only that the election of such officers shall be provided for. *People v. Brown*, 16 Cal. 442. County judge is one of the constitutional officers, and the term is limited to four years, but the legislature may determine the time of election and fix the commencement of the term. Where the act organizing a county fixes the term of county judge at two years, it is in that particular void. *Westbrook v. Rosborough*, 14 Cal. 181. Also: That a county judge elected upon the formation of San Mateo county held office four years. The legislature cannot limit the term. *People v. Templeton*, 12 Cal. 394.

SECTION 8. The county court shall have original jurisdiction of actions of forcible entry and detainer, of proceedings in insolvency, of actions to prevent or abate a nuisance, and of all such special cases and proceedings as are not otherwise provided

for; and also such criminal jurisdiction as the legislature may prescribe; they shall also have appellate jurisdiction in all cases arising in courts held by justices of the peace and recorders, and in such inferior courts as may be established in pursuance of section one of this article, in their respective counties. The county judges shall also hold, in their several counties, probate courts, and perform such duties as probate judges as may be prescribed by law. The county courts and their judges shall also have power to issue writs of *habeas corpus*, on petition by or on behalf of any person in actual custody in their respective counties. [Amendment ratified September 3, 1862.]

[ORIGINAL SECTION.]

SECTION 8. There shall be elected in each of the organized counties of this state one county judge, who shall hold his office for four years. He shall hold the county court and perform the duties of surrogate or probate judge. The county judge, with two justices of the peace, to be designated according to law, shall hold courts of sessions, with such criminal jurisdiction as the legislature shall prescribe, and he shall perform such other duties as shall be required by law.

The Probate Court has exclusive jurisdiction of the accounts of executors and administrators, and of the final distribution of estates of deceased persons, while it may be conceded that the district courts have jurisdiction of actions against executors to declare a trust in respect to real estate in many instances, and actions arising out of certain controversies having their origin in the administration of estates. *Haverstick v. Truedell*, 51 Cal. 431; *Auguisola v. Arnaz*, Id. 437; in *Matter of Will of Bowen*, 34 Cal. 682; *Gur-*

ney *v.* Maloney, 38 Cal. 85; Bush *v.* Lindsey, 44 Cal. 121.

Proceedings for condemnation of water to supply cities are special cases. Spencer Creek Water Co. *v.* Vallejo, 48 Cal. 70, and the County Court has jurisdiction unless the legislature confers jurisdiction upon some other court. Such jurisdiction cannot be given to county judge, nor to any court not mentioned in Art. VI, *Id.* See also, S. & C. R. R. Co. *v.* Galgiani, 49 Cal. 139. Writs of mandate are not "special cases" and power to issue such writs cannot be conferred upon county courts. People *v.* Kern Co., 45 Cal. 679.

The constitution has not conferred upon probate courts jurisdiction of all matters relating to estates of deceased persons. The district courts have jurisdiction of actions against the administrator of an administrator for settlement of accounts of the estate of which his intestate was administrator. This jurisdiction grows out of the equity powers of the district courts. Bush *v.* Lindsey, 44 Cal. 121.

The statutes conferring jurisdiction upon the County Court in cases of forcible entry and unlawful detainer are constitutional. Stoppelkamp *v.* Mangeot, 42 Cal. 321. *Queare*, whether the provision of the forcible detainer act of 1863, by which the landlord is authorized to change terms of lease by notice to the tenant is constitutional. *Id.* [See Secs. 871

and 1943, C. C., and *Corson v. Berson*, 86 Cal. 439.]

The proceeding provided for by statutes of 1868 and 1870, modifying grades of streets in San Francisco is a "special" one, and not an action at law involving validity of an assessment, and jurisdiction to render final judgment may be vested in County Court. Appeal of *Houghton*, 42 Cal. 35. The constitution has not undertaken to secure the benefit of appeal to any person against the legislative control. *Id.*

The Probate Court has not jurisdiction to direct an executor on receipt of money loaned, to re-convey real estate, conveyed to his testator by deed absolute on its face, but intended as security for repayment of the money loaned. *Anderson v. Fisk*, 41 Cal. 308.

Proceedings under the act of January 24, 1860 [Stats. p. 5], for settling claims to lots in town sites on public lands before the county judge do not constitute an action at law or in equity, but such proceedings are special cases, and said act is constitutional. *Ricks v. Reed*, 19 Cal. 551. Affirmed in *Ryan v. Tomlinson*, 31 Cal. 15. "Special cases" and proceedings mentioned in this section does not include any of those cases for which courts of general common law and equity jurisdiction have always supplied the remedy, but must be confined to such new cases as are the creation of statutes, and the proceedings under which are unknown to the general framework of courts of common law and equity. Actions to prevent or abate

nuisances are not special cases, and an act conferring jurisdiction of such cases on county courts is unconstitutional. *Parsons v. Tuolumne W. Co.*, 5 Cal. 43.

Under original section the court of sessions was constituted of the county judge and the two justices. The court could exercise no jurisdiction in the absence of either. *People v. Ah Chung*, 5 Cal. 103.

SECTION 9. The legislature shall determine the number of justices of the peace to be elected in each city and township of the state, and fix by law their powers, duties and responsibilities; provided such powers shall not in any case trench upon the jurisdiction of the several courts of record. The Supreme Court, the district courts, county courts, the probate courts, and such other courts as the legislature shall prescribe, shall be courts of record. [Amendment ratified Sept. 3, 1862.]

[ORIGINAL SECTION.]

SECTION 9. The county courts shall have such jurisdiction, in cases arising in justices' courts, and in special cases, as the legislature may prescribe, but shall have no original civil jurisdiction, except in such special cases.

It is not unconstitutional for the legislature to give jurisdiction to justices courts of actions to recover a penalty from a railroad company for charging excessive fare. *Reed v. Omnibus R. R. Co.*, 33 Cal. 212.

The act of April 27, 1863 [Stats. p. 399], giving jurisdiction to justices courts in cases of unlawful detainer, violates section 8, article VI, which vests such jurisdiction in the county court. *Caulfield v. Stephens*, 28 Cal. 118.

Brummagin v. Spencer, 29 Cal. 662; Meacham v. McKay, 37 Cal. 162; Stoppelkamp v. Man-geot, 42 Cal. 324; Johnson v. Chely, 43 Cal. 304. As to dicta upon concurrent jurisdiction, see Courtright v. B. R. & A. W. & M. Co., 30 Cal. 577, 582, 584.

Justices' courts have no jurisdiction over a counter claim which exceeds the amount for which they can enter judgment. Malson v. Vaughn, 23 Cal. 61.

SECTION 10. The legislature shall fix by law the jurisdiction of any recorder's or other inferior municipal court which may be established in pursuance of section one of this article, and shall fix by law the powers, duties and responsibilities of the judges thereof. [Amendment ratified Sept. 3, 1862.]

[ORIGINAL SECTION.]

SECTION 10. The times and places of holding the terms of the Supreme Court, and the general and special terms of the district courts within the several districts, shall be provided for by law.

SECTION 11. The legislature shall provide for the election of a clerk of the Supreme Court, county clerks, district attorneys, sheriffs, and other necessary officers, and shall fix by law their duties and compensation. County clerks shall be *ex officio* clerks of the courts of record in and for their respective counties. The legislature shall also provide for the appointment by the several district courts of one or more commissioners in the several counties of their respective districts, with authority to perform chamber business of the judges of the district courts and county courts, and also to take depositions, and to perform such other business connected with the administration of justice as may be prescribed by law. [Amendment ratified Sept. 3, 1862.]

## [ORIGINAL SECTION.]

SECTION 11. No judicial officer, except a justice of the peace, shall receive to his own use, any fees or perquisites of office.

Under the original section it was held that recorders (who held certain courts) were not within the inhibition of this section, but should be classed with justices of the peace, the latter being the only judicial officers authorized to retain fees. *Curtis v. Sacramento*, 13 Cal. 291.

SECTION 12. The times and places of holding the terms of the several courts of record shall be provided for by law. [Amendment ratified Sept. 3, 1862.]

## [ORIGINAL SECTION.]

SECTION 12. The legislature shall provide for the speedy publication of all statute laws, and of such judicial decisions as it may deem expedient; and all laws and judicial decisions shall be free for publication by any person.

There is no prohibition against an act of the legislature by which judgments may be entered in vacation, and the Practice Act in several instances contemplates it. *People v. Jones*, 20 Cal. 50.

SECTION 13. No judicial officer, except justices of the peace, recorders and commissioners shall receive to his own use any fees or perquisites of office. [Amendment ratified September 3, 1862.]

## [ORIGINAL SECTION.]

SECTION 13. Tribunals for conciliation may be established with such powers and duties as may be prescribed by law; but such tribunals shall have no power to render judgment to be obligatory on the

parties, except they voluntarily submit their matters in difference, and agree to abide the judgment, or assent thereto in the presence of such tribunal, in such cases as shall be prescribed by law.

SECTION 14. The legislature shall provide for the speedy publication of such opinions of the Supreme Court as it may deem expedient; and all opinions shall be free for publication by any person. [Amendment ratified September 3, 1862.]

[ORIGINAL SECTION.]

SECTION 14. The legislature shall determine the number of justices of the peace to be elected in each county, city, town, and incorporated village of the state, and fix by law their powers, duties and responsibilities. It shall also determine in what cases appeals may be made from justices' courts to the County Court.

SECTION 15. The justices of the Supreme Court, district judges and county judges shall severally, at stated times during their continuance in office, receive for their services a compensation, which shall not be increased or diminished during the term for which they shall have been elected; provided, that county judges shall be paid out of the county treasury of their respective counties. [Amendment ratified September 3, 1862.]

[ORIGINAL SECTION.]

SECTION 15. The justices of the Supreme Court and judges of the district courts shall severally, at stated times during their continuance in office, receive for their services a compensation to be paid out of the treasury.

The act of 1856 [Stats. p. 183], organizing Fresno county, provided, among other things, for the election of a county judge whose salary should be fixed by the supervisors at a sum *not exceeding three thousand dollars per*



annum. The supervisors, several weeks after the election, fixed the salary at twenty-five hundred dollars per annum. *Held*, this was a sufficient fixing by law as required by section 7, article VI, and was not a delegation of legislative duty to the supervisors, and that mandamus would not lie to compel payment of more than the sum fixed by the supervisors. *Hart v. Johnson*, 17 Cal. 306.

Judges of District Court cannot draw salary in the absence of appropriation by the legislature for that purpose. *Meyers v. English*, 9 Cal. 342.

SECTION 16. The justices of the Supreme Court and the district judges and the county judges shall be ineligible to any other office then a judicial office during the term for which they shall have been elected. [Amendment ratified September 3, 1862.]

[ORIGINAL SECTION.]

SECTION 16. The justices of the Supreme Court and district judges shall be ineligible to any other office during the term for which they shall have been elected.

SECTION 17. Judges shall not charge juries with respect to matters of fact, but may state the testimony and declare the law. [Amendment ratified September 3, 1862.]

[The original section was in identical words.]

To instruct that "proof of the possession of property in the hands of defendant recently after the same property was stolen out of the meat shop of Vestal, unless the possession of the same is satisfactorily accounted for by the defendant, raises a presumption of guilt against

defendant," was erroneous. *People v. Mitchell*, 55 Cal. 236.

An instruction to the effect that the possession of a key, unexplained, ["if you believe that he had it in his exclusive possession"] raises a reasonable presumption that he had it for the purposes shown by the evidence that it could be used for, *Held*, an instruction upon facts, and erroneous. *People v. Walden*, 51 Cal. 588. The court should not instruct the jury upon controverted facts nor the weight of evidence. *McNeal v. Barney*, *Id.* 603. The court may determine and charge the jury whether there is any evidence with regard to an issue or tending to sustain a fact on which judgment may depend. *People v. Welch*, 49 Cal. 174. This section is discussed and the policy of the prohibition against instructing upon facts questioned. Instructions upon an hypothesis, if asked, should be given. *People v. Taylor*, 36 Cal. 256.

The court being authorized to state the evidence, can also state that there is no evidence as to particular facts. *King's Case*, 27 Cal. 514, approved in *People v. Dick*, 34 Cal. 665. But it is the province of the jury, unaided by the court, to say whether a given fact is proven or not. *Id.*

The court instructed the jury that B was to be considered the sole proprietor of the overland mail line, *Held*, erroneous as instruction upon facts, but as no other conclusion could be arrived at from the evidence, *Held*, further,

said instruction did not prejudice the defendant. *Pico v. Stevens*, 18 Cal. 377.

The court in charging the jury has no right to employ the word, "victim," in referring to the person killed by the defendant. In the charge given the use of said word seemed to assume that the deceased was wrongfully killed, which was the point in issue, and was calculated to injure the defendant. *People v. Williams*, 17 Cal. 142. When an instruction asked accurately states the law, it should be given in the very words asked, especially in criminal cases. *Id.* As to stating evidence, see *People v. Ybarra*, *Id.* 166, and instructions as to evidence of justification. *People v. Lamb*, *Id.* 323. As to fact of notice from publication in a newspaper, *Treadwell v. Wells*, 4 Cal. 261.

SECTION 18. The style of all process shall be: "The people of the state of California," and all prosecutions shall be conducted in their name and by their authority. [Amendment ratified Sept. 3, 1862.]

[ORIGINAL SECTION.]

SECTION 18. The style of all process shall be: "The people of the state of California." All the prosecutions shall be conducted in their name and by the authority of the same.

SECTION 19. In order that no inconvenience may result to the public service from the taking effect of the amendments proposed to said article VI, by the legislature of eighteen hundred and sixty-one, no officer shall be superseded thereby, nor shall the organization of the several courts be changed thereby, until the election and qualification of the several officers provided for in said amendments.

[This section was added by amendment ratified Sept. 3, 1862.]

The several courts of the state continued and retained their jurisdiction unimpaired until the organization of the new courts. *Gillis v. Barnett*, 38 Cal. 393. Also *In re Oliverez*, 21 Cal. 415.

## ARTICLE VII.

### MILITIA.

SECTION 1. The legislature shall provide by law for organizing and disciplining the militia, in such manner as they shall deem expedient, not incompatible with the constitution and laws of the United States.

SECTION 2. Officers of the militia shall be elected or appointed in such manner as the legislature shall from time to time direct, and shall be commissioned by the governor.

SECTION 3. The governor shall have power to call forth the militia to execute the laws of the state, to suppress insurrections and repel invasions.

## ARTICLE VIII.

### STATE INDEBTEDNESS.

SECTION 1. The legislature shall not in any manner create any debt or debts, liability or liabilities, which shall, singly or in the aggregate, with any previous debts or liabilities, exceed the sum of three hundred thousand dollars, except in case of war, to repel invasion or suppress insurrection, unless the same shall be authorized by some law for some single *object* or work, to be distinctly specified therein, which law shall provide ways and means, exclusive of loans, for the payment of the

interest of such debt or liability as it falls due, and also to pay and discharge the principal of such debt or liability within twenty years from the time of the contracting thereof, and shall be irrevocable until the principal and interest thereon shall be paid and discharged; but no such law shall take effect until, at a general election, it shall have been submitted to the people and have received a majority of all the votes cast for and against it at such election; and all money raised by authority of such law shall be applied only to the specific object therein stated, or to the payment of the debt thereby created; and such law shall be published in at least one newspaper in each judicial district, if one be published therein, throughout the state, for three months next preceding the election at which it is submitted to the people.

The legislature alone can determine when such state of war exists as will justify creating a debt to repel invasion and the courts will not review its actions. [Citing *Franklin v. Board of Examiners*, 23 Cal. 175.] *People v. Pacheco*, 27 Cal. 177. There is no limitation upon the amount of debt the state may contract in case of war, to repel invasion, etc. *Id.*

It is not essential that funds should be in the treasury to meet an appropriation when it is made. To constitute a valid appropriation it is only necessary to designate an amount, and the fund out of which it shall be paid. *McCauley v. Brooks*, 16 Cal. 11; but see authorities under section 23, article IV, and *State of California v. McCauley*, 15 Cal. 429.

The act of March 29, 1860 [Stats. p. 128], authorizing the building of the state capitol at Sacramento is not unconstitutional. The

act provides that the ultimate cost shall not exceed five hundred thousand dollars, but it makes an appropriation of only one hundred thousand dollars, and does not authorize any contract which shall exceed the latter sum. *Koppikus v. State Capitol Commissioners*, 16 Cal. 249. As to constitutionality of the act, approved in *Heyneman v. Blake*, 19 Cal. 596, and as to what constitutes state indebtedness, approved in *People v. Pacheco*, 27 Cal. 208. In the act of April 18, 1856 [Stats. p. 112], a contract for three hundred thousand dollars was authorized to be made, to be paid in bonds of the state, and at the time of its passage the state was indebted to the amount limited by the constitution. That act was, therefore, unconstitutional. *Nougues v. Douglass*, 7 Cal. 65. As to what constitutes an appropriation see also *State v. McCauley*, 15 Cal. 492, and *McCauley v. Brooks*, 16 Cal. 11. This prohibition applies to the state as a political sovereign—a corporation—and does not prevent the state authorizing municipal or county indebtedness. [Subscription to Railroad.] *Pattison v. Supervisors of Yuba County*, 13 Cal. 176, and see further as to constitutionality of statutes authorizing subscriptions in aid of railroads. *S. & V. R. R. Co. v. Stockton City*, 41 Cal. 162; *Napa Valley R. R. Co. v. Napa County*, 30 Cal. 435.

An appropriation is necessary before district judges can draw their salaries. *Meyers v. English*, 9 Cal. 342.

*Claims against the state contracted in defi-*

ance of this article can be legalized by being submitted to a vote of the people in the manner required by the constitution, but in no other way. *Nougues v. Douglass*, 7 Cal. 65.

The liability of the state on the Indian war bonds provided for in the act of May, 1852 [Stats. p. 59], was made dependent upon whether congress made provision to meet the expenses incurred, and congress having made such provision, it is unnecessary to decide the constitutionality of the act upon the question of the amount of indebtedness contemplated by the act. *Sawyer v. Colgan*, 102 Cal. 293.

## ARTICLE IX.

### • EDUCATION.

SECTION 1. A superintendent of public instruction shall, at the special election for judicial officers to be held in the year eighteen hundred and sixty-three; and every four years thereafter, at such special elections, be elected by the qualified voters of the state, and shall enter upon the duties of his office on the first day of December next after his election. [Amendment ratified Sept. 3, 1862.]

#### [ORIGINAL SECTION.]

SECTION 1. The legislature shall provide for the election, by the people, of a superintendent of public instruction, who shall hold his office for three years, and whose duties shall be prescribed by law, and who shall receive such compensation as the legislature may direct.

SECTION 2. The legislature shall encourage, by all suitable means, the promotion of intellectual, scientific, moral and agricultural improvement. The proceeds of all lands that may be granted by the United States to this state for the support of

schools, which may be sold or disposed of, and the five hundred thousand acres of land granted to the new states, under an act of congress distributing the proceeds of the public lands among the several states of the union, approved A. D. one thousand eight hundred and forty-one, and all estates of deceased persons who may have died without leaving a will or heir, and also such per cent. as may be granted by congress on the sale of lands in this state, shall be and remain a perpetual fund, the interest of which, together with all the rents of the unsold lands, and such other means as the legislature may provide, shall be inviolably appropriated to the support of common schools throughout the state.

The act of April 2, 1863 [Stats. p. 145], authorizing Placer county to subscribe for stock of the C. P. R. R. Co. is unconstitutional in so far as it attempts to divert moneys from the school fund by requiring that all the taxes to be paid by said railroad in said county shall be paid into the "railroad fund" created by the act. The proportion of school money provided by general legislation to be derived from the general revenue of the county cannot be so diverted. *Crosby v. Lyons*, 37 Cal. 242.

SECTION 3. The legislature shall provide for a system of common schools, by which a school shall be kept up and supported in each district at least three months in every year; and any school district neglecting to keep up and support such a school may be deprived of its proportion of the interest of the public fund during such neglect.

SECTION 4. The legislature shall take measures for the protection, improvement, or other disposition of such lands as have been or may hereafter be reserved or granted by the United States, or any person or persons, to this state, for the use of a un



versity; and the funds accruing from the rents or sale of such lands, or from any other source, for the purpose aforesaid, shall be and remain a permanent fund, the interest of which shall be applied to the support of said university, with such branches as the public convenience may demand for the promotion of literature, the arts and sciences, as may be authorized by the terms of such grant. And it shall be the duty of the legislature, as soon as may be, to provide effectual means for the improvement and permanent security of the funds of said university.

## ARTICLE X.

### AMENDMENT OF THE CONSTITUTION.

SECTION 1. Any amendment or amendments to this constitution may be proposed in the senate or assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, with the yeas and nays taken thereon, and referred to the legislature then next to be chosen, and shall be published for three months next preceding the time of making such choice. And if, in the legislature next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the legislature to submit such proposed amendment or amendments to the people in such manner and at such time as the legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors qualified to vote for members of the legislature voting thereon, such amendment or amendments shall become part of the constitution.

SECTION 2. And if at any time two-thirds of the senate and assembly shall think it necessary to revise and change this entire constitution, they shall recommend to the electors at the next election for members of the legislature to vote for or against a con-

vention; and if it shall appear that a majority of the electors voting at such election have voted in favor of calling a convention, the legislature shall, at its next session, provide by law for calling a convention, to be holden within six months after the passage of such law; and such convention shall consist of a number of members not less than that of both branches of the legislature. The constitution that may have been agreed upon and adopted by such convention shall be submitted to the people, at a special election to be provided for by law, for their ratification or rejection. Each voter shall express his opinion by depositing in the ballot box a ticket, whereon shall be written or printed the words "For the New Constitution" or "Against the New Constitution." The returns of such election shall, in such manner as the convention shall direct, be certified to the executive of the state, who shall call to his assistance the controller, treasurer, and secretary of state, and compare the votes so certified to him. If by such examination, it be ascertained that a majority of the whole number of votes cast at such election be in favor of such new constitution, the executive of this state shall, by his proclamation, declare such new constitution to be the constitution of the state of California. [Amendment ratified November 4, 1856.]

[ORIGINAL SECTION.]

SECTION 2. And if, at any time, two-thirds of the senate and assembly shall think it necessary to revise or change this entire constitution, they shall recommend to the electors, at the next election for members of the legislature, to vote for or against the convention; and if it shall appear that a majority of the electors voting at such election have voted in favor of calling a convention, the legislature shall, at its next session, provide by law for calling a convention, to be holden within six months after the passage of such law; and such convention shall consist of a number of members *not less than that of both branches of the legislature.*

## ARTICLE XI.

## MISCELLANEOUS PROVISIONS.

SECTION 1. The first session of the legislature shall be held at the Pueblo de San José, which place shall be the permanent seat of government until removed by law; *provided, however*, that two-thirds of all the members elected to each house of the legislature shall concur in the passage of such law.

After the first session of the legislature the seat of the state government should be located at such place as the legislature, by two-thirds vote, might direct. The removal to Vallejo was not unconstitutional, and there was nothing in the fact that such removal was induced by certain offers of Mr. Vallejo; nor in the fact that he did not fulfill his promises, to render the removal invalid. *People v. Bigler*, 5 Cal. 24.

SECTION 2. Any citizen of this state who shall, after the adoption of this constitution, fight a duel with deadly weapons, or send or accept a challenge to fight a duel with deadly weapons, either within this state or out of it, or who shall act as second or knowingly aid or assist in any manner those thus offending, shall not be allowed to hold any office of profit or to enjoy the right of suffrage under this constitution.

SECTION 3. Members of the legislature and all officers, executive and judicial, except such inferior officers as may be by law exempted, shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation:

"I do solemnly swear (or affirm, as the case may be) that I will support the constitution of the

United States and the constitution of the state of California, and that I will faithfully discharge the duties of the office of ———, according to the best of my ability.”

And no other oath, declaration or test shall be required as a qualification for any office or public trust.

The “test oath” required to be taken by attorneys at law, by the act of April 25, 1863 [Stats. p. 566], is not materially different from the constitutional oath in substance. It requires the affiant to state that he has not, since the passage of the act, and will not aid, countenance or assist, etc., those now engaged in rebellion, but it goes beyond the strict letter of the constitutional oath with reference to his past conduct, and this has raised some doubt in the minds of the court as to its constitutionality, but the court will not declare it unconstitutional upon a mere doubt. *Cohen v. Wright*, 22 Cal. 294.

SECTION 4. The legislature shall establish a system of county and town governments, which shall be as nearly uniform as practicable throughout the state.

By an act of April 9, 1862 [Stats. p. 151], the legislature appointed a commission to cut a canal above the mouth of the American river, for the protection of the city of Sacramento. Thereafter, in 1867, by reason of high water and by reason of said canal, the lands of John Hoagland were seriously washed and damaged. By act of March 11, 1876 [Stats. p. 214], the said John Hoagland was authorized to sue the city to recover for his damages. 17

*Held*, the legislature had no power to create a claim against those who are to be taxed with its payment. The city in no manner authorized or participated in causing the damage. *Hoagland v. Sacramento*, 52 Cal. 142.

In construing the act of March 18, 1874 [Stats. p. 436], authorizing the counties of Santa Barbara and San Luis Obispo to issue bonds for the improvement of roads, *Held*, section 4, article XI, is not mandatory in the sense that special acts of this kind cannot be passed. "The practice of the legislature in passing special laws in respect to special matters relating to the county governments, which were provided for by general laws, has so long been acquiesced in by all departments of the state government, and their validity has so frequently been implicitly upheld by the courts, that it is not now open to question. *People v. Board of Supervisors*, 50 Cal. 561.

The authority to determine what degree of uniformity shall exist is left to the legislature. *People v. Lake Co.*, 33 Cal. 487.

The towns here referred to are such in general features as were known in other states when the constitution was adopted. *Ex parte Wall*, 48 Cal. 279. The local option law of 1874 [Stats. p. 434] was unconstitutional as a delegation of legislative power to the electors of towns and cities, and was not a statute authorizing the legislative bodies of the municipalities to pass a by-law or ordinance prohibiting the sale of liquors. *Id.*

SECTION 5. The legislature shall have power to provide for the election of a board of supervisors in each county, and these supervisors shall jointly and individually perform such duties as may be prescribed by law.

The constitution having declared supervisors elective, the office cannot be filled in any other mode. This has also been held with reference to assessors and collectors. An act, however, which causes an extension of a term of office is not necessarily unconstitutional unless it violates section 7, article XI, by exceeding four years. *Christy v. Supervisors of Sacramento Co.*, 39 Cal. 3.

SECTION 6. All officers whose election or appointment is not provided for by this constitution, and all officers whose offices may hereafter be created by law, shall be elected by the people, or appointed, as the legislature may direct.

SECTION 7. When the duration of any office is not provided for by this constitution, it may be declared by law; and if not so declared, such office shall be held during the pleasure of the authority making the appointment; nor shall the duration of any office not fixed by this constitution ever exceed four years.

The section is not intended to forbid a holding over until a successor is elected or appointed, but merely to limit the incumbent's term by election or appointment. *People v. Stratton*, 28 Cal. 388; *People v. Tilton*, 37 Cal. 614.

*It does not declare that an office shall not continue more than four years, but simply that no person shall be elected or appointed*

for a longer term than four years. *People v. Stratton*, 28 Cal. 382.

The commissioners appointed to manage the Yosemite valley and Mariposa Big Tree grove were "officers" and their term of office expired four years after their appointment. *People v. Ashburner*, 55 Cal. 517.

The commissioners of the funded debt of San Francisco are not officers and their terms are not limited to four years. *People v. Middleton*, 28 Cal. 603.

When the term of an office is not fixed by law the tenure is at the pleasure of the appointing power, and this cannot be taken away by the legislature except by limiting the term. *People v. Hill*, 7 Cal. 98.

The legislature may alter or abridge the term of an office that has been created by the legislature. *People v. Haskell*, 5 Cal. 357.

SECTION 8. The fiscal year shall commence on the first day of July.

An act of the legislature to legalize assessment for taxes for the fiscal year beginning March 1, is not void because the constitution makes the fiscal year commence July 1. The word "fiscal" may be treated as surplusage. *People v. Todd*, 23 Cal. 181.

SECTION 9. Each county, town, city and incorporated village shall make provision for the support of its own officers, subject to such restrictions and regulations as the legislature may prescribe.

SECTION 10. The credit of the state shall not in any manner be given or loaned to or in aid of any individual, association or corporation; nor shall the state, directly or indirectly, become a stockholder in any association or corporation.

This section does not, nor does any provision of the constitution, prevent the state from appropriating its funds in time of war, to aid a corporation in the construction of a railroad to be used by the state for military purposes. So held with reference to the act of April 4, 1864 [Stats. p. 344], to issue bonds in aid of the Central Pacific railroad. *People v. Pacheco*, 27 Cal. 177.

SECTION 11. Suits may be brought against the state in such manner and in such courts as shall be directed by law.

SECTION 12. No contract of marriage, if otherwise duly made, shall be invalidated for want of conformity to the requirements of any religious sect.

SECTION 13. Taxation shall be equal and uniform throughout the state. All property in the state shall be taxed in proportion to its value, to be ascertained as directed by law, but assessors and collectors of town, county and state taxes shall be elected by the qualified electors of the district, county, or town in which the property taxed for state, county, or town purposes is situated.

To render taxation uniform, it is essential that each taxing district should confine itself to the objects of taxation within its own limits; but *this with the understanding that the situs of personal property may be the domicile of the owner.* The act of March 16,



1874 [Stats. p. 376], to assess migratory stock and for distribution of taxes derived therefrom was unconstitutional. *People v. Townsend*, 56 Cal. 633.

Property of a municipality is not taxable for municipal purposes. *Low v. Lewis*, 46 Cal. 550. *People v. Doe, G.*, 36 Cal. 220.

A solvent debt secured by mortgage is property and cannot be exempted from taxation. [Approving *People v. McCreery*, 34 Cal. 433; *People v. Gerke*, 35 *Id.* 677; *People v. Black Diamond C. M. Co.*, 37 *Id.* 54; *People v. Whartenby*, 38 *Id.* 461.] The first section of the acts of April 1 and April 4, 1870 [Stats. pp. 584, 710], exempting such debts, is contrary to the general law respecting the assessment of solvent debts in attempting to exempt a single class of such debts, and violates the constitution which requires taxation to be uniform. *People v. Eddy*, 43 Cal. 331. It was held in *Koch v. Briggs*, 14 Cal. 257, that to tax such debts was double taxation.

In order to cover this subject thoroughly see *Emery v. S. F. Gas Co.*, 28 Cal. 346 and cases there cited, and *People v. Coleman*, 4 Cal. 46. The latter case and also *High v. Shoemaker*, are practically overruled in *People v. McCreery*, 34 Cal. 458, so far as they hold that any property may be exempted from taxation.

The act of March 19, 1878 [Stats. p. 338], to legalize certain assessments in San Francisco was not unconstitutional. It did not purport to be a general law, and was not

therefore required to have a uniform operation. It simply attempts to deal with the collection of taxes levied and delinquent within a particular municipality. [*People v. C. P. R. R. Co.*, 43 Cal. 433.] *S. F. v. S. V. W. W. Co.*, 54 Cal. 571. Capital stock of a corporation, if possessing any value, is taxable property. *Id.*

Under the acts of April 4, 1870 [Stats. p. 693] and February 12, 1872 [Stats. p. 83], for the purpose of constructing a bridge over San Antonio creek, and a road leading thereto, creating a district upon which taxes should be assessed for said purposes, and authorizing the county assessor to assess said taxes, *Held*, the assessment was unconstitutional, the assessor not being one elected by the people of the district or districts in which the taxes were assessed. The assessment was a tax. [*People v. Whyler*, 41 Cal. 351.] *Smith v. Farrelly*, 52 Cal. 77.

The value of property is not required to be ascertained before being assessed, nor after the passage of the act fixing the rate. The legislature may levy the tax either before or after the ascertainment of value. *People v. Latham*, 52 Cal. 598.

The constitution is not a grant but a limitation of power, and when any one challenges a legislative enactment as unconstitutional, it is incumbent upon them to designate the particular provision claimed to be violated. *The legislature has power to compel local improvements, such as abating nuisances, drain-*

age, irrigation, levees, etc., and provide for assessments to pay for the same; designate the mode of assessment and the officers to make the assessment. And those clauses of the constitution which provide that taxation shall be equal and uniform, the mode of assessment, by whom assessments shall be made, and that all property shall be taxed, have no application to assessments for local improvements. *Hagar v. Sup. Yolo Co.*, 47 Cal. 223.

The legislature cannot authorize the board of supervisors to remit a tax or part of a tax within a specified district, even if the tax is for a local purpose and is to be expended within the district. All property must be taxed, and taxation must be equal and uniform. *Wilson v. Supervisors of Sutter Co.*, 47 Cal. 91.

The property of the United States, of this state, and of municipal corporations is exempt from taxation for revenue purposes. *Doyle v. Austin*, 47 Cal. 354, citing *People v. Lynch*, 51 Cal. 34; *Brady v. King*, 53 *Id.* 44, and *Taylor v. Palmer*, 31 *Id.* 252. *Held*, the act of March 6, 1876 [Stats. p. 140], providing that the trustees of Swamp Land Reclamation District No. 118 should make up a sworn statement of the cost of the reclamation work, based upon the books and vouchers thereof, and that the amount so reported should be assessed upon the lands, was at best an attempt by the legislature to levy an assessment for a local improvement without reference to

the character or nature of the charges in the books, and irrespective of whether the law had been complied with, and that the constitution admitted of no such legislation. *People v. Houston*, 54 Cal 536.

That the legislature cannot levy tax or assessment in municipalities see the later case of *Schumacker v. Toberman*, 56 Cal. 511.

A superintendent of irrigation who collects water rates in, and whose duties only relate to, such particular localities as may become organized as irrigation districts, although referred to as a county officer, is not such, and an act of the legislature directing him to be compensated from the county treasury is unconstitutional. *Knox v. Los Angeles County*, 58 Cal. 59.

Section 3696 of the Political Code, as it then stood, was declared unconstitutional in so far as it authorized the state board, in determining the rate of state tax, to make allowance for delinquency in the collection of taxes in *Houghton v. Austin*, 47 Cal. 646, but the constitutionality of the entire section was not decided. The logical result of that decision is that the entire section is unconstitutional, since the power to fix the rate is to be exercised only upon the condition of making the allowance for deficiency, and the condition having failed on constitutional grounds, the power to determine the rate fell with it. *Wills v. Austin*, 53 Cal. 152; *Harper v. Rowe*, *Id.* 233.

*That the act creating a state board of*

equalization is not unconstitutional see *Savings and Loan Society v. Austin*, 46 Cal. 416.

In construing the act of March 4, 1864 [Stats. p. 140], in relation to improvement and protection of wharves, docks and water front of San Francisco it is held that it was not the intention of the legislature to exempt from toll any part of the commerce passing over the same, and that leases of docks and wharves to private corporations or companies by which the latter were given certain privileges and control did not exempt from toll the merchandise transported by them. The toll required to be collected for the purpose of keeping in repair and building docks and wharves is a tax, and the legislature had no power to exempt therefrom commerce handled by its lessees—it must tax all or none. [Approving *French v. Teschemacher*, 24 Cal. 544.] *People v. S. F. & A. R. R. Co.*, 35 Cal. 606.

The only restriction upon the legislature in the matter of taxation is that it must be equal and uniform. The legislature can impose a general tax upon all the property in the state, or a local tax upon property of particular subdivisions, as counties, cities or towns. And, except as specially restricted, its power of appropriation of the money raised is co-extensive with its power of taxation. [Sustaining *People v. Amador County*, 26 Cal. 641; *Napa Valley R. R. Co. v. Napa County*, 30 Cal. 435.] *Beale v. Amador County*, 35 Cal. 824.

see *People v. Pacheco*, 27 Cal. 177, and cases there cited.

Growing crops are personal property and cannot be exempted from taxation. *People v. Gerke*, 35 Cal. 677. As to the power of the legislature in passing curative acts for the purpose of validating assessments see *People v. McCreery*, 34 Cal. 437.

Under the act of 1864 [Stats. p. 347], for the widening of Kearney street in San Francisco the supervisors were authorized to assess the expenses upon the owners of houses and lands and railroad corporations and companies that might be benefited thereby, and to determine what portions of the city and what railroads would be benefited. *Held*, the act did not require a different rule for apportionment of expense on railroads from that applied to other property and was not on that ground unconstitutional. Appeal of N. B. & M. R. R. Co., 32 Cal. 501; see also Appeal of Piper, *Id.* 530.

The property of the C. P. R. R. Co. within this state is subject to taxation, and the state revenue law is not unconstitutional because there is a want of uniformity between the particular laws prevailing in the several counties, with regard to the enforcement of delinquent taxes. The constitution authorizes the legislature to pass a law directing the district attorney to bring an action in the name of the people to recover delinquent taxes, and such law does *not* interfere with the constitutional

duties of the tax collectors. *People v. C. P. R. R. Co.*, 43 Cal. 398.

A charge levied upon all the land of a district to be used in constructing levees to protect the district from overflow, is a tax, and not an assessment. The fact that such levees may injure instead of benefit some land, does not render the tax unequal or void for want of uniformity. If such statute, however, exempts personal property from the tax, it is unconstitutional, because not levied on all the property in the district. *People v. Whyler*, 41 Cal. 351.

Bonds of the United States are not subject to taxation, but bonds of the state of California are private property, and shall be taxed. *People v. Home Ins. Co.*, 29 Cal. 534.

The words "taxation" and "assessment" do not have the same signification. Taxation represents a power which the legislature takes from the law of its creation to impose taxes for the support of the government, and assessment is employed to represent local burdens imposed by municipal corporations for street improvements. The latter cannot be exercised as an independent or principal power like that of taxation, but only as an incident to the power organizing municipalities. The owner cannot be made liable by means of assessment for more than the value of his land. Personal liability cannot be created through an assessment. *Taylor v. Palmer*, 31 Cal. 241. With reference to this note, see *Williams v. Corcoran*, 46 Cal. 555; appeal of *N. B. & M.*

R. R. Co., 32 *Id.* 528; *Matter of Market Street*, 49 *Id.* 549; *Beaudry v. Valdez*, 32 *Id.* 279; *Gaffney v. Gough*, 36 *Id.* 105; *Coniff v. Hastings*, *Id.* 292-3; *Himmelman v. Steiner*, 38 *Id.* 179. And see also *Taylor v. Donner*, 31 Cal. 481, and *Chambers v. Satterlee*, 40 *Id.* 514.

Where the sheriff is by law also made tax collector, he is elected to two distinct offices. As the tax collector is not authorized to appoint an under tax collector, the under sheriff cannot perform the duties of tax collector. *Lathrop v. Brittain*, 30 Cal. 680.

While the legislature cannot by law transfer the duties of tax collector from a person elected to that office to one who was not, it may provide for the election of a tax collector who shall go into office before the term of the former tax collector expires. *Mills v. Sargeant*, 36 Cal. 379.

An act making the treasurer *ex officio* tax collector instead of the sheriff, is unconstitutional in so far as it attempts to transfer the office prior to an election of treasurer. *People v. Kelsey*, 34 Cal. 470.

The offices of sheriff and tax collector are made distinct by the constitution, but they may be united in the same person. [*Merrill v. Gorham*, 6 Cal. 41; *People v. Edwards*, 9 *Id.* 292.] The sheriff being made *ex officio* collector of foreign miners' license, may be deprived of that office before expiration of his term. The constitution has fixed no period of tenure to office of tax collector. So far as it exists in the sheriff, it is created by the leg-



islature, and the legislature may take it away or otherwise control it. [*People v. Haskell*, 5 Cal. 357.] A legislative act authorizing supervisors to appoint collector of foreign miners' license, is not unconstitutional. Although assessors and tax collectors are constitutional officers, it does not follow that all revenue shall pass through their hands. The legislature may require taxes to be paid direct into the treasury. Taxes of the character of foreign miners' license are not necessarily involved in the duties of the tax collector. *People v. Squires*, 14 Cal. 13, cited with approval in *Miner v. Solano County*, 26 Cal. 118; *Cohen v. Wright*, 22 *Id.* 320; *People v. Banvard*, 27 *Id.* 475.

The aim had in view in declaring that taxation shall be equal and uniform, and that assessors shall be elected in the several districts to be assessed, does not involve the mere local proceedings of municipalities. A street assessment in San Francisco, under the consolidation act, though an exercise of the taxing power, is not in itself that taxation here required to be laid upon property in proportion to value. This distinction has become settled in this state. *Chambers v. Satterlee*, 40 Cal. 514.

Assessors are limited to the districts for for which they are elected, and cannot assess property elsewhere. *People v. Placerville & S. V. R. R. Co.*, 34 Cal. 656; *People v. Hastings*, 29 Cal. 450.

State taxes are not debts within the mean-

ing of the act of congress making greenbacks legal tender for all debts. *Perry v. Washburn*, 20 Cal. 318.

A tax is a debt in the nature of a personal debt due from the property owner, and not a charge alone upon property, created by or depending upon the regularity of the proceedings given by statute, and informal assessments may be corrected by act of the legislature. *People v. Seymour*, 16 Cal. 333. Cited and explained in *Perry v. Washburn*, 20 Cal. 351; approved in *Guy v. Washburn*, 23 *Id.* 116; *City of Oakland v. Whipple*, 39 *Id.* 115.

The general power of the legislature to tax, is not restricted as to mode, nor is there any limitation of time under the constitution; unless restrained by the constitution, the legislature possesses plenary power over the subject of taxation. The act of April 3, 1860 [Stats. p. 139], to enforce collection of taxes for the years 1858, 1859, is constitutional. *People v. Seymour*, *supra*, cited in *Tebbs v. Wetherby*, 23 *Id.* 58, and approved in *Guy v. Washburn*, 23 *Id.* 116.

The power of municipalities, under their charters to impose license taxes upon all classes of business, has been held not to be governed or restrained by the provision of section 16, article I, as to impairing the obligation of contracts. The question seems to have arisen first in *People v. Coleman*, 4 Cal. 46. The power to levy and collect such taxes were further confirmed in *Sacramento v. Cal. Stage Co.*, 12 Cal. 134; *Sacramento v. Crocker*,

16 *Id.* 120. The foreign miners' license tax was sustained in *People v. Naglee*, 1 Cal. 232, but it was held that the mere residence of a Chinaman in a mining camp did not subject him to the foreign miners' license, in *Ex parte Ah Pong*, 19 Cal. 106. And the imposition of a stamp tax upon passengers was held invalid as an attempt to regulate commerce, in *People v. Raymond*, 34 Cal. 492. Also a tax of fifty dollars upon passengers arriving in this state by sea, who were incompetent to become citizens, was held void in *People v. Downer*, 7 Cal. 170. And so as to a tax upon bills of lading given in the transportation of merchandise from this state to another, in *Brumma-gin v. Tillinghast*, 18 Cal. 265. It has been more recently held that a municipal license upon the business of railroads whose franchises have been granted by act of congress, and engaged in transporting passengers and freight to and from this and other states cannot be sustained. The court of this state yielding to the decisions of the United States Circuit Court. *San Benito v. S. P. R. R.*, 77 Cal. 518. Such license tax had been formerly sustained as to a local road, in *San Jose v. S. J. & S. C. R. R.*, 53 Cal. 475. In the latter case it was contended that the granting of the franchise was a contract between the municipality and the railroad, and that the ordinance imposing the tax was an *ex post facto* law, but this contention was not sustained.

It was held that under the Revenue Act of 1861 [Stats. p. 442-3], Wells, Fargo & Co., as

common carriers of gold dust, were required to pay license tax on each of their branch offices in the several counties, as well as upon the principal office in San Francisco. *People v. W., F. & Co.*, 19 Cal. 293.

The holder of the franchise for toll bridge over Yuba river, Marysville, has an interest in said bridge which is subject to taxation. The reversionary interest only belonged to the public. *Fall v. Mayor, etc.*, 19 Cal. 391.

The legislature may not exempt any class of property from taxation, however owned. A steamboat cannot be exempted because it had been taxed in New York before coming here. *Minturn v. Hayes*, 2 Cal. 590.

The constitution requires that all property be taxed, but the mode is matter of legislation and when adopted must be steadily followed. *De Witt v. Hayes*, 2 Cal. 463.

An act legalizing assessments for taxes for the fiscal year ending March 1, is not void, because the constitution makes the "fiscal year" commence with the first of July. "Fiscal," in the act, may be treated as surplusage. *People v. Todd*, 23 Cal. 181.

The percentage allowed a gauger of the port of San Francisco is not a tax, but a mere fee allowed a public officer in the exercise of a police power. *Addison v. Saulnier*, 19 Cal. 83.

Mortgages were not taxed as such, and were not considered personal property any more than a deed; and the money it secures *could not be taxed without a more particular description than "personal property."* An

assessment thus: "Mortgages [Marysville] \$100,000," held insufficient. *Falkner v. Hunt*, 16 Cal. 167. Much depends on the act creating the tax. *State of California v. Poulterer*, *Id.* 515.

The constitution of 1849 did not, like the present constitution, define "property" for the purposes of taxation, and it was held that where a bank was assessed upon a large amount of money, all of which was loaned upon mortgages upon real estate, and the tax upon the real estate was paid it would be double taxation to tax the mortgages, on the theory that a credit had no value apart from property in the hands of the debtor which is the basis of the credit. [*People v. Hibernia Bank*, 51 Cal. 244.] *Mackay v. San Francisco*, 113 Cal. 394-399.

SECTION 14. All property, both real and personal, of the wife, owned or claimed by her before marriage, and that acquired afterward by gift, devise or descent, shall be her separate property, and laws shall be passed more clearly defining the rights of the wife in relation as well to her separate property as to that held in common with her husband. Laws shall also be passed providing for the registration of the wife's separate property.

Up to 1857, at least, there was nothing in the statutes or constitution of this state revoking the common law rule that a wife could not convey her separate property to her husband—husband and wife being, in law, one person. A deed of trust by the wife to the husband, and the husband joining with her in the deed to himself, was ineffectual to con-

vey title or create a trust in the husband, nor was it valid as a gift. *Rico v. Brandenstein*, 98 Cal. 465. Married woman cannot charge her separate estate except by an instrument in writing executed in the manner directed by the legislature. *Smith v. Greer*, 31 Cal. 477. The term, "separate property," only distinguishes from her interest in common property, it neither limits nor enlarges her estate in the property mentioned. The section does not prescribe the mode in which the wife shall execute conveyances, nor does it refer thereto. The legislative requirement that the wife can convey her separate property only by an instrument signed by the husband as well as the wife, is not unconstitutional. *Dow v. Gould & Curry S. M. Co.*, 31 Cal. 630. And this applies to her deed executed by her attorney in fact. *Id.* Prior to 1863, a married woman had no power to constitute an attorney in fact to sell her separate property. *Dentzel v. Waldie*, 30 Cal. 141. Equity will compel a married woman, or her grantees with notice, to execute a contract to convey her separate real property, acquired by her prior to the cession of California. Under the civil law as it prevailed here at that time, a married woman could convey her separate estate with the bare assent of her husband. *Bodley v. Ferguson*, 30 Cal. 512. That the wife could not mortgage her separate property unless the husband joined in the execution of the instrument, see *Harrison v. Brown*, 16 Cal. 288.

And that she could not sell by attorney in fact, see *Mott v. Smith*, 16 Cal. 534.

The act of April 17, 1850 [Stats. p. 254], providing that the rents, issues and profits of the separate property of either husband or wife shall be deemed community property, is unconstitutional. *George v. Ransom*, 15 Cal. 322. See also *Spear v. Ward*, 20 *Id.* 674; *Lewis v. Johns*, 24 *Id.* 101, and *Kraemer v. Kraemer*, 52 *Id.* 305. But the separate property of the wife and the community property of both husband and wife are liable for the debts of the wife contracted before her marriage, and judgments recovered for such debts may be enforced against either or both of said classes of property indiscriminately. *Van Maren v. Johnson*, 15 Cal. 308. Approved in *Packard v. Arellanes*, 17 *Id.* 537; *Vlautin v. Bumpus*, 35 *Id.* 215, cited in *De Godey v. De Godey*, 39 *Id.* 164. But separate property of wife cannot be made chargeable with debts of husband. *Dickenson v. Owen*, 11 Cal. 71.

The registration of wife's separate property is intended only as notice of her title and not of her intention of claiming it. Her title thereto depends upon the way in which she has acquired it. Act of April 17, 1850 [Stats. p. 254], defining rights of husband and wife. *Selover v. A. R. C. Co.*, 7 Cal. 267. For construction of constitution and statute in addition to cases already cited, see *Revalk v. Kraemer*, 8 Cal. 72; *Kendall v. Miller*, 9 *Id.* 592; *Love v. Watkins*, 40 *Id.* 548, and cases there cited.

As was said in *Leonis v. Lazzarovich*, 55 Cal. 55, "whatever rights and powers a married woman has, or can legally exercise in the disposition of her property, are matters of statutory regulation," and it is not the purpose here to pursue this subject beyond the constitutional provisions.

SECTION 15. The legislature shall protect by law from forced sale a certain portion of the homestead and other property of all heads of families.

The legislative requirement that the declaration of homestead shall contain an estimate of the actual cash value of the premises, is mandatory [Civil Code, section 1263], and failure to state such estimate renders the declaration void. *Ashley v. Olmstead*, 54 Cal. 616. This section only requires legislative action with reference to exemption, and does not look to legislation in restraint of voluntary alienation. It is based upon the idea that the homestead will be carved out of the community property, and a voluntary conveyance by the husband would vest title in the vendee, subject only to its use as a homestead, or until the homestead is abandoned or is otherwise gone. Upon the death of the wife in the absence of children, the vendee would be entitled to possession. *Gee v. Moore*, 14 Cal. 472. See further, *Bowman v. Norton*, 16 *Id.* 216; *Himmelman v. Schmidt*, 23 *Id.* 121; *Brooks v. Hyde*, 37 *Id.* 374; *Brennan v. Wallace*, 25 *Id.* 108; *Gimmy v. Doane*, 22 *Id.* 638; *McQuade v. Whaley*, 31 *Id.* 531, and cases cited therein.



Persons of either sex may be the head of a family; and it is not necessary that a person be married to be the head of a family. The law only protects the homestead while the person is the head of a family; before he or she becomes such they have not the homestead exemption, and upon ceasing to be the head of a family, why should not the protection also cease? *Revalk v. Kraemer*, 8 Cal. 66.

SECTION 16. No perpetuities shall be allowed except for eleemosynary purposes.

SECTION 17. Every person shall be disqualified from holding any office of profit in this state who shall have been convicted of having given or offered a bribe to procure his election or appointment.

SECTION 18. Laws shall be made to exclude from office, serving on juries and from the right of suffrage, those who shall hereafter be convicted of bribery, perjury, forgery, or other high crimes. The privilege of free suffrage shall be supported by laws regulating elections and prohibiting, under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper practice.

SECTION 19. Absence from this state on business of the state or of the United States shall not affect the question of residence of any person.

SECTION 20. A plurality of the votes given at any election shall constitute a choice, where not otherwise directed in this constitution.

SECTION 21. All laws, decrees, regulations and provisions which from their nature require publication, shall be published in English and Spanish.

## ARTICLE XII.

## BOUNDARY.

SECTION 1. The boundary of the state of California shall be as follows:

Commencing at the point of intersection of forty-second degree of north latitude with the one hundred twentieth degree of longitude west from Greenwich, and running south on the line of said one hundred twentieth degree of west longitude until it intersects the thirty-ninth degree of north latitude; thence running in a straight line in a southeasterly direction to the river Colorado, at a point where it intersects the thirty-fifth degree of north latitude; thence down the middle of the channel of said river to the boundary line between the United States and Mexico, as established by the treaty of May thirtieth, one thousand eight hundred and forty-eight; thence running west and along said boundary line to the Pacific ocean, and extending therein three English miles; thence running in a northwesterly direction and following the direction of the Pacific coast to the forty-second degree of north latitude; thence on the line of said forty-second degree of north latitude to the place of beginning. Also, all the islands, harbors and bays along and adjacent to the coast.

## SCHEDULE.

SECTION 1. All rights, prosecutions, claims and contracts, as well of individuals as of bodies corporate, and all laws in force at the time of the adoption of this constitution, and not inconsistent therewith, until altered or repealed by the legislature, shall continue as if the same had not been adopted.

It was held that sections 1, 2 and 3 of the schedule were not intended to restrict or enlarge the provisions of section 4, article VI, limiting the jurisdiction of the Supreme Court in cases of appeal, whereby that court could

entertain appeals of cases pending prior to the adoption of the constitution in the Court of First Instance, and involving less than two hundred dollars. *Luther v. Ship Apollo*, 1 Cal. 16.

SECTION 2. The legislature shall provide for the removal of all causes which may be pending when this constitution goes into effect to courts created by the same.

SECTION 3. In order that no inconvenience may result to the public service from the taking effect of this constitution, no office shall be superseded thereby, nor the laws relative to the duties of the several officers be changed until the entering into office of the new officers to be appointed under this constitution.

SECTION 4. The provisions of this constitution concerning the term of residence necessary to enable persons to hold certain offices therein mentioned, shall not be held to apply to officers chosen by the people at the first election, or by the legislature at its first session.

SECTION 5. Every citizen of California declared a legal voter by this constitution, and every citizen of the United States a resident of this state on the day of election, shall be entitled to vote at the first general election under this constitution, and on the question of the adoption thereof.

SECTION 6. This constitution shall be submitted to the people for their ratification or rejection at the general election to be held on Tuesday, the thirteenth day of November, next. The executive of the existing government of California is hereby requested to issue a proclamation to the people, directing the prefects of the several districts, or, in case of vacancy, the sub-prefects or senior judge of first instance, to cause such election to be held on

the day aforesaid in their respective districts. The election shall be conducted in the manner which was prescribed for the election of delegates to this convention, except that the prefects, sub-prefects, or senior judge of first instance ordering such election in each district shall have power to designate any additional number of places for opening the polls, and that in every place of holding the election a regular poll list shall be kept by the judges and inspectors of election. It shall also be the duty of these judges and inspectors of election, on the day aforesaid, to receive the vote of the electors qualified to vote at such election. Each voter shall express his opinion by depositing in the ballot box a ticket whereon shall be written or printed "For the Constitution," or "Against the Constitution," or some such words as will distinctly convey the intention of the voter. These judges and inspectors shall also receive the votes for the several officers to be voted for at the said election, as herein provided. At the close of the election the judges and inspectors shall carefully count each ballot, and forthwith make duplicate returns thereof to the prefect, sub-prefect, or senior judge of first instance, as the case may be, of their respective districts; and said prefect, sub-prefect, or senior judge of first instance shall transmit one of the same, by the most safe and rapid conveyance, to the secretary of state. Upon the receipt of said returns, or on the tenth day of December next, if the returns be not sooner received, it shall be the duty of a board of canvassers, to consist of the secretary of state, one of the judges of the Superior Court, the prefect, judge of first instance, and an alcalde of the district of Monterey, or any three of the aforementioned officers, in the presence of all who shall choose to attend, to compare the votes given at said election, and to immediately publish an abstract of the same in one or more of the newspapers of California. And the executive will also, immediately after ascertaining that the constitution has been ratified by the people, make proclamation of

the fact; and thenceforth this constitution shall be ordained and established as the constitution of California.

SECTION 7. If this constitution shall be ratified by the people of California, the executive of the existing government is hereby requested, immediately after the same shall be ascertained, in the manner herein directed, to cause a fair copy thereof to be forwarded to the president of the United States, in order that he may lay it before the congress of the United States.

SECTION 8. At the general election aforesaid, viz., the thirteenth day of November next, there shall be elected a governor, lieutenant governor, members of the legislature, and also two members of congress.

SECTION 9. If this constitution shall be ratified by the people of California, the legislature shall assemble at the seat of government on the fifteenth day of December next; and in order to complete the organization of that body, the senate shall elect a president *pro tempore*, until the lieutenant governor shall be installed into office.

SECTION 10. On the organization of the legislature, it shall be the duty of the secretary of state to lay before each house a copy of the abstract made by the board of canvassers, and, if called for, the original returns of election, in order that each house may judge of the correctness of the report of said board of canvassers.

SECTION 11. The legislature, at its first session, shall elect such officers as may be ordered by this constitution to be elected by that body, and, within four days after its organization, proceed to elect two senators to the congress of the United States. But no law passed by this legislature shall take effect until signed by the governor after his installation into office.

SECTION 12. The senators and representatives of the congress of the United States elected by the legislature and people of California, as herein directed, shall be furnished with certified copies of this constitution, when ratified, which they shall lay before the congress of the United States, requesting, in the name of the people of California, the admission of the state of California into the American Union.

SECTION 13. All officers of this state, other than members of the legislature, shall be installed into office on the fifteenth day of December next, or as soon thereafter as practicable.

SECTION 14. Until the legislature shall divide the state into counties and senatorial and assembly districts, as directed by this constitution, the following shall be the apportionment of the two houses of the legislature, viz: The districts of San Diego and Los Angeles shall jointly elect two senators; the districts of Santa Barbara and San Luis Obispo shall jointly elect one senator; the district of Monterey, one senator; the district of San Jose, one senator; the district of San Francisco, two senators; the district of Sonoma, one senator; the district of Sacramento, four senators; and the district of San Joaquin, four senators. And the district of San Diego shall elect one member of the assembly; the district of Los Angeles, two members of assembly; the district of Santa Barbara, two members of assembly; the district of San Luis Obispo, one member of assembly; the district of Monterey, two members of assembly; the district of San Jose, three members of assembly; the district of San Francisco, five members of assembly; the district of Sonoma, two members of assembly; the district of Sacramento, nine members of assembly; and the district of San Joaquin, nine members of assembly.

*SECTION 15. Until the legislature shall otherwise direct, in accordance with the provisions of this constitution, the salary of the governor shall*

be ten thousand dollars per annum; and the salary of the lieutenant governor shall be double the pay of a state senator; and the pay of members of the legislature shall be sixteen dollars per diem while in attendance, and sixteen dollars for every twenty miles traveled by the usual route from their residences to the place of holding the session of the legislature, and in returning therefrom. And the legislature shall fix the salaries of all officers other than those elected by the people at the first election.

The legislature provided that the supervisors should fix the salary of a county judge not to exceed three thousand dollars. The supervisors fixed it at twenty-five hundred dollars. *Held*, action could not be maintained to compel payment of five hundred dollars more. [See Sec. 7, Art. VI, as originally adopted.] *Hart v. Johnson*, 17 Cal. 306.

SECTION 16. The limitation of the powers of the legislature contained in article VIII of this constitution shall not extend to the first legislature elected under the same, which is hereby authorized to negotiate for such amount as may be necessary to pay the expenses of the state government.

R. SEMPLE, President.

WM. G. MARCY, Secretary.

# CONSTITUTION

## OF THE

# UNITED STATES.

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### PREAMBLE.

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America.

### ARTICLE I.

#### LEGISLATIVE DEPARTMENT.

##### SECTION ONE.

1. All legislative powers herein granted shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

##### SECTION TWO.

1. The house of representatives shall be composed of members chosen every second year by the people of the several states, and



the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

2. No person shall be a representative who shall not have attained the age of twenty-five years, and been seven years a citizen of the United States, and who shall not when elected be an inhabitant of that state in which he shall be chosen.

3. Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five and Georgia three.

[This clause has been superseded, so far as

it relates to representation, by section two of the fourteenth amendment to the constitution.]

4. When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

5. The house of representatives shall choose their speaker and other officers, and shall have the sole power of impeachment.

#### SECTION THREE.

1. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof for six years, and each senator shall have one vote.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen, by resignation or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

3. No person shall be a senator who shall not have attained the age of thirty years, and *been nine years a citizen of the United States, and who shall not, when elected, be an inhab-*

itant of the state for which he shall be chosen.

4. The vice-president of the United States shall be president of the senate, but shall have no vote unless they shall be equally divided.

5. The senate shall choose their other officers, and have a president *pro tempore*, in the absence of the vice-president, or when he shall exercise the office of president of the United States.

6. The senate shall have the sole power to try all impeachments; when sitting for that purpose they shall be on oath or affirmation. When the president of the United States is tried the chief justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

7. Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment according to law.

#### SECTION FOUR.

1. The times, places and manner of holding elections for senators and representatives shall be prescribed in each state by the legislature thereof; but the congress may at any time, by law, make or alter such regulations, except as to the places of choosing senators.

2. The congress shall assemble at least once in every year, and such meeting shall be

on the first Monday in December, unless they shall by law appoint a different day.

#### SECTION FIVE.

1. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide.

2. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two-thirds, expel a member.

3. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy; and the yeas and nays of the members of either house, on any question, shall, at the desire of one-fifth of those present, be entered on the journal.

4. Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

#### SECTION SIX.

1. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, *except treason, felony and breach of*

the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

2. No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

#### SECTION SEVEN.

1. All bills for raising revenue shall originate in the house of representatives, but the senate may propose or concur with amendments as on other bills.

2. Every bill which shall have passed the house of representatives and the senate, shall, before it becomes a law, be presented to the president of the United States; if he approve he shall sign it, but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if

approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sunday excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress, by their adjournment, prevent its return, in which case it shall not be a law.

3. Every order, resolution or vote, to which the concurrence of the senate and the house of representatives may be necessary (except on a question of adjournment), shall be presented to the president of the United States; and, before the same shall take effect, shall be approved by him, or being disapproved by him, shall be re-passed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

#### SECTION EIGHT.

1. The congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

2. To borrow money on the credit of the United States;

3. To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

5. To coin money, regulate the value thereof, and of foreign coins, and fix the standard of weights and measures;

6. To provide for the punishment of counterfeiting the securities and current coin of the United States;

7. To establish post offices and post roads;

8. To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries;

9. To constitute tribunals inferior to the Supreme Court;

10. To define and punish piracies and felonies committed on the high seas, and offenses against the laws of nations;

11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

12. To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

13. To provide and maintain a navy;

14. To make rules for the government and regulation of the land and naval forces;

15. To provide for calling forth the militia

to execute the laws of the Union, suppress insurrection, and repel invasions;

16. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states, respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress;

17. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards and other needful buildings;

18. To make all laws which shall be necessary and proper, for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

#### SECTION NINE.

1. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by congress prior to the year one thousand eight hundred and eight, but a tax or duty



may be imposed on such importation, not exceeding ten dollars for each person;

2. The privilege of the writ of *habeas corpus* shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it;

3. No bill of attainder or *ex post facto* law shall be passed;

4. No capitation, or other direct tax, shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken;

5. No tax or duty shall be laid on articles exported from any state;

6. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to or from one state, be obliged to enter, clear, or pay duties in another;

7. No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time;

8. No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of the congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state.

## SECTION TEN.

1. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

2. No state shall, without the consent of the congress, lay any imposts or duties, on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports and exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the congress.

3. No state shall, without the consent of congress, lay any duty of tonnage, keep troops, or ships of war, in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

## ARTICLE II.

## EXECUTIVE DEPARTMENT.

## SECTION ONE.

1. The executive power shall be vested in a president of the United States of America. *He shall hold his office during the term of*

four years, and, together with the vice-president, chosen for the same term, be elected as follows:

2. Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of senators and representatives to which the state may be entitled in the congress; but no senator or representative, or person holding an office of trust or profit under the United States shall be appointed an elector.

3. The electors shall meet in their respective states and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose by ballot one of them for president; and if no person have a majority then from the five highest on the list the said house shall, in like manner, choose

the president. But, in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors shall be the vice-president. But if there should remain two or more who have equal votes, the senate shall choose from them by ballot the vice-president.

[This clause has been superseded by the twelfth amendment to the constitution.]

4. The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

5. No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office who shall not have attained the age of thirty-five years, and been fourteen years a resident within the United States.

6. In case of the removal of the president from office, or of his death, resignation or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president, and the congress may, by law, provide for the case of removal, death, resignation or inability, both of the president

and vice-president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed or a president shall be elected.

7. The president shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States or any of them.

8. Before he enters on the execution of his office he shall take the following oath or affirmation: "I do solemnly swear [or affirm] that I will faithfully execute the office of president of the United States, and will, to the best of my ability, preserve, protect and defend the constitution of the United States."

#### SECTION TWO.

1. The president shall be commander in chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the senate, to make trea-

ties, provided two-thirds of the senators present concur; and he shall nominate, and, by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States whose appointments are not herein otherwise provided for and which shall be established by law; but the congress may by law vest the appointment of such inferior officers as they think proper in the president alone, in the courts of law, or in the heads of departments.

3. The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions, which shall expire at the end of their next session.

#### SECTION THREE.

1. He shall, from time to time, give to the congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be carefully executed, and shall commission all the officers of the United States,

## SECTION FOUR.

1. The president, vice-president, and all civil officers of the United States, shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors.

## ARTICLE III.

## JUDICIAL DEPARTMENT.

## SECTION ONE.

1. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the congress may, from time to time, ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

## SECTION TWO.

1. The judicial power shall extend to all cases in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction: to controversies to which the United States shall be a party; to controversies between two or more states; between a state and citizens of another state; between citizens of different states; between citizens of

the same state claiming lands under grants of different states; and between a state, or the citizens thereof, and foreign states, citizens or subjects.

2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the congress shall make.

3. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be put at such place or places as the congress may, by law, have directed.

#### SECTION THREE.

1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort.

2. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

3. The congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or *forfeiture, except during the life of the person attainted.*

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**ARTICLE IV.****STATE ACTS.****SECTION ONE.**

1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

**SECTION TWO.**

1. The citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states.

2. A person charged in any state with treason, felony, or other crime, who shall flee from justice and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

3. No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

**SECTION THREE.**

1. New states may be admitted by the congress into this Union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by

the junction of two or more states or parts of states, without the consent of the legislatures of the states concerned, as well as of the congress.

2. The congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

#### SECTION FOUR.

1. The United States shall guarantee to every state in this Union a republican form of government, and shall protect each of them against invasion; and, on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence.

### ARTICLE V.

#### AMENDMENTS.

##### SECTION ONE.

1. The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification

may be proposed by the congress; provided, that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

## ARTICLE VI.

### PROMISCUOUS PROVISIONS.

#### SECTION ONE.

1. All debts contracted and engagements entered into, before the adoption of this constitution, shall be as valid against the United States, under this constitution, as under the confederation.

2. This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

3. The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound, by oath or affirmation, to support this constitution; but

no religious test shall ever be required as a qualification to any office or public trust under the United States.

## ARTICLE VII.

### RATIFICATION OF CONSTITUTION.

#### SECTION ONE.

1. The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same.

Done in convention, by the unanimous consent of the states present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth. In witness whereof, we have hereunto subscribed our names.

GEORGE WASHINGTON,  
President, and deputy from Virginia.

#### NEW HAMPSHIRE.

John Langdon,  
Nicholas Gilman.

#### MASSACHUSETTS.

Nathaniel Gorham,  
Rufus King.

#### CONNECTICUT.

William Samuel Johnson,  
Roger Sherman.

#### NEW YORK.

Alexander Hamilton.

#### NEW JERSEY.

William Livingston,

#### DELAWARE.

George Read,  
Gunning Bedford, Jr.  
John Dickinson,  
Richard Bassett,  
Jacob Broom.

#### MARYLAND.

James M'Henry,  
Daniel of St. Tho. Jenifer,  
Daniel Carroll.

#### VIRGINIA.

John Blair,  
James Madison, Jr.

David Brearly,  
William Patterson,  
Johnathan Dayton.

## PENNSYLVANIA.

Benjamin Franklin,  
Thomas Mifflin,  
Robert Morris,  
George Clymer,  
Thomas Fitzsimons,  
Jared Ingersoll,  
James Wilson,  
Gouverneur Morris.

## NORTH CAROLINA.

William Blount,  
Richard Dobbs Spaight,  
Hugh Williamson.

## SOUTH CAROLINA.

John Rutledge,  
Charles C. Pinckney,  
Charles Pinckney,  
Pierce Butler.

## GEORGIA.

William Few,  
Abraham Baldwin.

Attest; WILLIAM JACKSON, Secretary.

## AMENDMENTS.

## ARTICLE I.

## RESTRICTION ON POWER OF CONGRESS.

SECTION 1. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances. [Proposed Sept. 25th, 1789; ratified Dec. 15th, 1791.]

## ARTICLE II.

## RIGHT TO BEAR ARMS.

SECTION 1. A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.—[Id.]

## ARTICLE III.

## BILLETING OF SOLDIERS.

SECTION 1. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.—[*Id.*]

## ARTICLE IV.

## SEIZURES, SEARCHES, AND WARRANTS.

SECTION 1. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon reasonable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.—[*Id.*]

## ARTICLE V.

## CRIMINAL PROCEEDING AND CONDEMNATION OF PROPERTY.

SECTION 1. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war, or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty,

or property, without due process of law; nor shall private property be taken for public use without just compensation.—[*Id.*]

## ARTICLE VI.

### MODE OF TRIAL IN CRIMINAL PROCEEDINGS.

SECTION 1. In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.—[*Id.*]

## ARTICLE VII.

### TRIAL BY JURY.

SECTION 1. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact, tried by jury shall be otherwise re-examined in any court of the United States than according to the rules of common law.—[*Id.*]

## ARTICLE VIII.

### BAIL—FINES—PUNISHMENTS.

SECTION 1. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.—[*Id.*]

## ARTICLE IX.

## CERTAIN RIGHTS NOT DENIED TO THE PEOPLE.

SECTION 1. The enumeration in the constitution of certain rights shall not be construed to deny or disparage others retained by the people.—[*Id.*]

## ARTICLE X.

## STATES RIGHTS.

SECTION 1. The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.—[*Id.*]

## ARTICLE XI.

## JUDICIAL POWERS.

SECTION 1. The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by the citizens of another state, or by citizens or subjects of any foreign state.—[Proposed March 5th, 1794; ratified January 8th, 1798.]

## ARTICLE XII.

## ELECTION OF PRESIDENT AND VICE-PRESIDENT.

SECTION 1. The electors shall meet in their respective states and vote by ballot for president and vice-president, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and *in distinct ballots* the person voted for as vice-



president; and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes for each, which lists they shall sign and certify, and transmit, sealed, to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes for president shall be the president, if such a number be a majority of the whole number of electors appointed; and if no person have such a majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice-president shall act as president, as in case of the death or other constitutional disability of the president. The person having the greatest number of votes as vice-president, shall be the vice-president, if such num-

ber be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list the senate shall choose the vice-president; a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of president shall be eligible to that of vice-president of the United States.—[Proposed Dec. 12th, 1803; ratified Sept. 25th, 1804.]

### ARTICLE XIII.

#### SLAVERY.

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation. [Declared ratified December 18th, 1865. U. S. Statutes at Large, volume 13, p. 775.]

### ARTICLE XIV.

#### CITIZENSHIP, REPRESENTATION, AND PAYMENT OF PUBLIC DEBT.

SECTION 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside. No state *shall make or enforce any law which shall abridge the privileges or immunities of citi-*

zens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for president and vice-president of the United States, representatives in congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

SECTION 3. No person shall be a senator or representative in congress or elector of president and vice-president, or hold any office, civil or military, under the United States or under any state, who, having previously taken an oath as a member of congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the constitution of the United States, shall have en-

gaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But congress may, by a vote of two-thirds of each house, remove such disability.

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

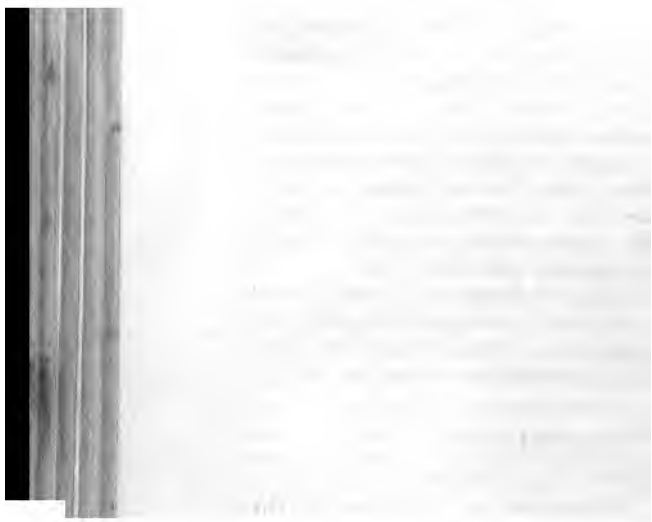
SECTION 5. The congress shall have power to enforce, by appropriate legislation, the provisions of this article. [Declared ratified July 28th, 1868. U. S. Statutes at Large, vol. 15, pp. 709-11.]

## ARTICLE XV.

### ELECTIVE FRANCHISE.

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SECTION 2. The congress shall have power to enforce this article by appropriate legislation. [U. S. Statutes at Large, vol. 15, p. 346.]



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**VOTE, ETC.**, how passed, see Resolution, Art. 1, Sec. 7.

**WARRANTS**, for searches, etc., when and how to issue—fourth amendment, Art. 4.

**WITNESS**, in criminal cases, no one compelled to be against himself—fifth amendment, Art. 5.

**T R E A T Y**  
—OF—  
**Peace, Friendship, Limits, and Settlement**  
BETWEEN THE  
**United States of America and the Mexican Republic.**

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*Dated at Guadalupe Hidalgo, 2d February, 1848.*

*Ratified by the President U. S., 16th March, 1848.*

*Exchanged at Queretaro, 30th May, 1848.*

*Proclaimed by the President U. S., 4th July, 1848.*

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BY THE PRESIDENT OF THE UNITED  
STATES OF AMERICA.

**A PROCLAMATION.**

Whereas, a treaty of peace, friendship, limits, and settlement between the United States of America and the Mexican republic was concluded and signed at the city of Guadalupe Hidalgo, on the second day of February, one thousand eight hundred and forty-eight, which treaty, as amended by the senate of the United States, and being in the English and Spanish languages, is word for word as follows:

*In the name of Almighty God:*

The United States of America and the United Mexican States, animated by a sincere desire to put an end to the calamities of the war which unhappily exists between the two re-



publics, and to establish upon a solid basis relations of peace and friendship, which shall confer reciprocal benefits upon the citizens of both, and assure the concord, harmony and mutual confidence wherein the two people should live, as good neighbors, have for that purpose appointed their respective plenipotentiaries—that is to say, the president of the United States has appointed Nicholas P. Trist, a citizen of the United States, and the president of the Mexican republic has appointed Don Luis Gonzaga Cuevas, Don Bernardo Couto and Don Miguel Atristan, citizens of the said republic, who, after a reciprocal communication of their respective full powers, have, under the protection of Almighty God, the author of peace, arranged, agreed upon and signed the following:

TREATY OF PEACE, FRIENDSHIP, LIMITS AND SETTLEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE MEXICAN REPUBLIC.

ARTICLE I.

PEACE.

There shall be firm and universal peace between the United States of America and the Mexican republic, and between their respective countries, territories, cities, towns and people, without exception of places or persons.

ARTICLE II.

SUSPENSION OF HOSTILITIES.

Immediately upon the signature of this treaty, a convention shall be entered into ~~be~~

tween a commissioner or commissioners appointed by the general-in-chief of the forces of the United States and such as may be appointed by the Mexican government, to the end that a provisional suspension of hostilities shall take place, and that, in the places occupied by the said forces, constitutional order may be re-established as regards the political, administrative and judicial branches, so far as this shall be permitted by the circumstances of military occupation.

### ARTICLE III.

#### RAISING BLOCKADES—WITHDRAWAL OF TROOPS, ETC.

Immediately upon the ratification of the present treaty by the government of the United States, orders shall be transmitted to the commanders of their land and naval forces, requiring the latter (provided this treaty shall then have been ratified by the government of the Mexican republic, and the ratifications exchanged) immediately to desist from blockading any Mexican ports; and requiring the former (under the same condition) to commence, at the earliest moment practicable, withdrawing all troops of the United States then in the interior of the Mexican republic, to points that shall be selected by common agreement, at a distance from the seaports not exceeding thirty leagues; and such evacuation of the interior of the republic shall be completed *with the least possible delay*; the *Mexican government hereby binding itself to*

afford every facility in its power for rendering the same convenient to the troops, on their march and in their new positions, and for promoting a good understanding between them and the inhabitants. In like manner orders shall be dispatched to the persons in charge of the custom houses at all the ports occupied by the forces of the United States, requiring them (under the same condition) immediately to deliver possession of the same to the persons authorized by the Mexican government to receive it, together with all bonds and evidences of debt for duties on importations and on exportations, not yet fallen due. Moreover, a faithful and exact account shall be made out, showing the entire amount of all duties on imports and on exports, collected at such custom houses or elsewhere in Mexico, by authority of the United States, from and after the day of the ratification of this treaty by the government of the Mexican republic; and also an account of the cost of collection; and such entire amount, deducting only the cost of collection, shall be delivered to the Mexican government, at the city of Mexico, within three months after the exchange of ratifications.

The evacuation of the capital of the Mexican republic by the troops of the United States, in virtue of the above stipulation, shall be completed within one month after the orders there stipulated for shall have been received by the commander of said troops, or sooner, if possible.

## ARTICLE IV.

RESTORATION OF CASTLES, FORTS, PRISONERS,  
ETC.

Immediately after the exchange of ratifications of the present treaty, all castles, forts, territories, places and possessions, which have been taken or occupied by the forces of the United States during the present war within the limits of the Mexican republic, as about to be established by the following article, shall be definitively restored to the said republic, together with all the artillery, arms, apparatus of war, munitions and other public property, which were in the said castles and forts when captured, and which shall remain there at the time when this treaty shall be duly ratified by the government of the Mexican republic. To this end, immediately upon the signature of this treaty, orders shall be dispatched to the American officers commanding such castles and forts, securing against the removal or destruction of any such artillery, arms, apparatus of war, munitions, or other public property. The city of Mexico, within the inner line of intrenchments surrounding the said city, is comprehended in the above stipulations as regards the restoration of artillery, apparatus of war, etc.

The final evacuation of the territory of the Mexican republic by the forces of the United States, shall be completed in three months *from the said exchange of ratifications, or sooner, if possible*; the Mexican government

hereby engaging, as in the foregoing article, to use all means in its power for facilitating such evacuation, and rendering it convenient to the troops, and for promoting a good understanding between them and the inhabitants.

If, however, the ratification of this treaty by both parties should not take place in time to allow the embarkation of the troops of the United States to be completed before the commencement of the sickly season, at the Mexican ports on the Gulf of Mexico, in such case a friendly arrangement shall be entered into between the general-in-chief of the said troops and the Mexican government, whereby healthy and otherwise suitable places at a distance from the ports not exceeding thirty leagues, shall be designated for the residence of such troops as may not yet have embarked, until the return of the healthy season. And the space of time here referred to as comprehending the sickly season shall be understood to extend from the first day of May to the first day of November.

All prisoners of war taken on either side, on land or on sea, shall be restored as soon as practicable after the exchange of ratifications of this treaty. It is also agreed that if any Mexicans should now be held as captives by any savage tribe within the limits of the United States, as about to be established by the following article, the government of the said United States will exact the release of

such captives, and cause them to be restored to their country.

## ARTICLE V.

### BOUNDARY LINE.

The boundary line between the two republics shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, otherwise called Rio Bravo del Norte, or opposite the mouth of its deepest branch, if it should have more than one branch emptying directly into the sea; from thence up the middle of that river, following the deepest channel, where it has more than one, to the point where it strikes the southern boundary of New Mexico; thence, westwardly, along the whole southern boundary of New Mexico (which runs north of the town called Paso), to its western termination; thence northward, along the western line of New Mexico, until it intersects the first branch of the river Gila (or, if it should not intersect any branch of that river, then to the point on the said line nearest to such branch, and thence in a direct line to the same); thence down the middle of the said branch and of the said river, until it empties into the Rio Colorado; thence across the Rio Colorado, following the division line between Upper and Lower California, to the Pacific ocean.

The southern and western limits of New Mexico, mentioned in this article, are those *laid down in the map* entitled "*Map of the United Mexican States, as organized and de-*

fined by various acts of the congress of said republic, and constructed according to the best authorities. Revised edition. Published at New York, in 1847, by J. Disturnell." Of which map a copy is added to this treaty, bearing the signatures and seals of the undersigned plenipotentiaries. And in order to preclude all difficulty in tracing upon the ground the limit separating Upper from Lower California, it is agreed that the said limit shall consist of a straight line drawn from the middle of the Rio Gila, where it unites with the Colorado, to a point on the coast of the Pacific ocean distant one marine league due south of the southernmost point of the port of San Diego, according to the plan of said port made in the year one thousand seven hundred and eighty-two, by Don Juan Pantoja, second sailing master of the Spanish fleet, and published at Madrid in the year one thousand eight hundred and two, in the atlas to the voyage of the schooners Sutil and Mexicana, of which plan a copy is hereunto added, signed and sealed by the respective plenipotentiaries.

In order to designate the boundary line with due precision, upon authoritative maps, and to establish upon the ground landmarks which shall show the limits of both republics, as described in the present article, the two governments shall each appoint a commissioner and a surveyor, who, before the expiration of one year from the date of the exchange of ratifications of this treaty, shall meet at

the port of San Diego, and proceed to run and mark the said boundary in its whole course to the mouth of the Rio Bravo del Norte. They shall keep journals and make out plans of their operations; and the result agreed upon by them shall be deemed a part of this treaty, and shall have the same force as if it were inserted therein. The two governments will amicably agree regarding what may be necessary to these persons, and also as to their respective escorts, should such be necessary.

The boundary line established by this article shall be religiously respected by each of the two republics, and no change shall ever be made therein, except by the express and free consent of both nations, lawfully given by the general government of each, in conformity with its own constitution.

## ARTICLE VI.

### NAVIGATION OF GULF OF CALIFORNIA AND COLORADO RIVER.

The vessels and citizens of the United States shall, in all time, have a free and uninterrupted passage by the Gulf of California, and by the river Colorado below its confluence with the Gila, to and from their possessions situated north of the boundary line defined in the preceding article; it being understood that this passage is to be by navigating the Gulf of California and the river Colorado, and not by land, without the express consent of the Mexican government.

*If, by the examinations which may be*



publics, and to establish upon a solid basis relations of peace and friendship, which shall confer reciprocal benefits upon the citizens of both, and assure the concord, harmony and mutual confidence wherein the two people should live, as good neighbors, have for that purpose appointed their respective plenipotentiaries—that is to say, the president of the United States has appointed Nicholas P. Trist, a citizen of the United States, and the president of the Mexican republic has appointed Don Luis Gonzaga Cuevas, Don Bernardo Couto and Don Miguel Atristan, citizens of the said republic, who, after a reciprocal communication of their respective full powers, have, under the protection of Almighty God, the author of peace, arranged, agreed upon and signed the following:

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ARTICLE II.

SUSPENSION OF HOSTILITIES.

Immediately upon the signature of this *treaty*, a convention shall be entered into be-

tween a commissioner or commissioners appointed by the general-in-chief of the forces of the United States and such as may be appointed by the Mexican government, to the end that a provisional suspension of hostilities shall take place, and that, in the places occupied by the said forces, constitutional order may be re-established as regards the political, administrative and judicial branches, so far as this shall be permitted by the circumstances of military occupation.

### ARTICLE III.

#### RAISING BLOCKADES—WITHDRAWAL OF TROOPS, ETC.

Immediately upon the ratification of the present treaty by the government of the United States, orders shall be transmitted to the commanders of their land and naval forces, requiring the latter (provided this treaty shall then have been ratified by the government of the Mexican republic, and the ratifications exchanged) immediately to desist from blockading any Mexican ports; and requiring the former (under the same condition) to commence, at the earliest moment practicable, withdrawing all troops of the United States then in the interior of the Mexican republic, to points that shall be selected by common agreement, at a distance from the seaports not exceeding thirty leagues; and such evacuation of the interior of the republic shall be completed with the least possible delay; the *Mexican government hereby binding itself to*

In the said territories property of every kind, now belonging to Mexicans not established there, shall be inviolably respected. The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract, shall enjoy, with respect to it, guarantees equally ample as if the same belonged to citizens of the United States.

### ARTICLE IX.

#### ADMISSION OF MEXICANS TO CITIZENSHIP IN THE UNITED STATES.

The Mexicans, who in the territories aforesaid, shall not preserve the character of citizens of the Mexican republic, conformably with what is stipulated in the preceding article, shall be incorporated into the Union of the United States, and be admitted at the proper time (to be judged of by the congress of the United States) to the enjoyment of all the rights of citizens of the United States according to the principles of the constitution; and in the meantime shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without restriction.

### ARTICLE X.

[Stricken out.]

### ARTICLE XI.

#### INCURSIONS OF SAVAGES INTO MEXICAN TERRITORY.

Considering that a great part of the territories which, by the present treaty, are to be

comprehended for the future within the limits of the United States, is now occupied by savage tribes, who will hereafter be under the exclusive control of the government of the United States, and whose incursions within the territory of Mexico would be prejudicial in the extreme, it is solemnly agreed that all such incursions shall be forcibly restrained by the government of the United States whenever this may be necessary; and that, when they cannot be prevented, they shall be punished by the said government, and satisfaction for the same shall be exacted—all in the same way, and with equal diligence and energy, as if the same incursions were meditated or committed within its own territory against its own citizens.

It shall not be lawful, under any pretext whatever, for any inhabitant of the United States to purchase or acquire any Mexican, or any foreigner residing in Mexico, who may have been captured by Indians inhabiting the territory of either of the two republics, nor to purchase or acquire horses, mules, cattle, or property of any kind, stolen within Mexican territory by such Indians.

And in the event of any person or persons, captured within Mexican territory by Indians, being carried into the territory of the United States, the government of the latter engages and binds itself in the most solemn manner so soon as it shall know of such captives being *within its territory*, and shall be able *so to do, through the faithful exercise of its in-*

fluence and power, to rescue them and return them to their country, or deliver them to the agent or representative of the Mexican government. The Mexican authorities will, as far as practicable, give to the government of the United States notice of such captures; and its agent shall pay the expenses incurred in the maintenance and transmission of the rescued captives; who, in the meantime, shall be treated with the utmost hospitality by the American authorities at the place where they may be. But if the government of the United States, before receiving such notice from Mexico, should obtain intelligence, through any other channel, of the existence of Mexican captives within its territory, it will proceed forthwith to effect their release and delivery to the Mexican agent as above stipulated.

For the purpose of giving to these stipulations the fullest possible efficacy, thereby affording the security and redress demanded by their true spirit and intent, the government of the United States will now and hereafter pass, without unnecessary delay, and always vigilantly enforce, such laws as the nature of the subject may require. And, finally, the sacredness of this obligation shall never be lost sight of by the said government when providing for the removal of the Indians from any portion of the said territories, or for its being settled by citizens of the United States; but, on the contrary, special care shall then be taken not to place its Indian occu-

pants under the necessity of seeking new homes by committing those invasions which the United States have solemnly obliged themselves to restrain.

## ARTICLE XII.

FIFTEEN MILLION DOLLARS TO BE PAID TO MEXICO.

In consideration of the extension acquired by the boundaries of the United States, as defined in the fifth article of the present treaty, the government of the United States engages to pay to that of the Mexican republic the sum of fifteen millions of dollars.

INSTALLMENTS OF PAYMENT—INTEREST ON DEFERRED PAYMENTS.

Immediately after this treaty shall have been duly ratified by the government of the Mexican republic, the sum of three millions of dollars shall be paid to the said government by that of the United States, at the city of Mexico, in gold or silver coin of Mexico. The remaining twelve millions of dollars shall be paid at the same place, and in the same coin, in annual installments of three millions of dollars each, together with interest on the same at the rate of six per centum per annum. This interest shall begin to run upon the whole sum of twelve millions from the day of the ratification of the present treaty by the Mexican government, and the first of the installments shall be paid at the expiration of *one year from the same day*. Together with *each annual installment*, as it falls due, the

whole interest accruing on such installment from the beginning shall also be paid.

### ARTICLE XIII.

#### ASSUMPTION BY UNITED STATES OF CLAIMS AGAINST MEXICO.

The United States engage, moreover, to assume and pay to the claimants all the amounts now due them, and those hereafter to become due, by reason of the claims already liquidated, and decided against the Mexican republic, under the conventions between the two republics severally concluded on the eleventh day of April, one thousand eight hundred and thirty-nine, and on the thirtieth day of January, one thousand eight hundred and forty-three; so that the Mexican republic shall be absolutely exempt for the future from all expenses whatever on account of the said claims.

### ARTICLE XIV.

#### DISCHARGE OF CLAIMS OF AMERICAN CITIZENS AGAINST MEXICO.

The United States do furthermore discharge the Mexican republic from all claims of citizens of the United States, not heretofore decided against the Mexican government, which may have arisen previously to the date of the signature of this treaty; which discharge shall be final and perpetual, whether the said claims be rejected or be allowed by the board of commissioners provided for in the following article, and whatever shall be the total amount of those allowed.

## ARTICLE XV.

## SATISFACTION OF CLAIMS.

The United States, exonerating Mexico from all demands on account of the claims of their citizens mentioned in the preceding article, and considering them entirely and forever canceled, whatever their amount may be, undertake to make satisfaction for the same, to an amount not exceeding three and one-quarter millions of dollars. To ascertain the validity and amount of those claims, a board of commissioners shall be established by the government of the United States, whose awards shall be final and conclusive; provided, that in deciding upon the validity of each claim, the board shall be guided and governed by the principles and rules of decision prescribed by the first and fifth articles of the unratified convention, concluded at the city of Mexico on the twentieth day of November, one thousand eight hundred and forty-three; and in no case shall an award be made in favor of any claim not embraced by these principles and rules.

If, in the opinion of the said board of commissioners, or of the claimants, any books, records, or documents, in the possession or power of the government of the Mexican republic, shall be deemed necessary to the just decision of any claim, the commissioners, or the claimants through them, shall, within *such period as congress may designate, make an application in writing for the same, ad-*



- dressed to the Mexican minister for foreign affairs, to be transmitted by the secretary of state of the United States; and the Mexican government engages, at the earliest possible moment after the receipt of such demand, to cause any of the books, records, or documents, so specified, which shall be in their possession or power (or authenticated copies or extracts of the same), to be transmitted to the said secretary of state, who shall immediately deliver them over to the said board of commissioners; provided that no such application shall be made by, or at the instance of, any claimant, until the facts which it is expected to prove by such books, records, or documents shall have been stated under oath or affirmation.

## ARTICLE XVI.

### FORTIFICATIONS FOR SECURITY.

Each of the contracting parties reserves to itself the entire right to fortify whatever point within its territory it may judge proper so to fortify, for its security.

## ARTICLE XVII.

### TREATY OF AMITY, COMMERCE, AND NAVIGATION.

The treaty of amity, commerce, and navigation, concluded at the city of Mexico on the fifth day of April, in the year of our Lord one thousand eight hundred and thirty-one, between the United States of America and the United Mexican States, except the additional article, and except so far as the stipulations of

the said treaty may be incompatible with any stipulation contained in the present treaty, is hereby revived for the period of eight years from the day of the exchange of the ratifications of this treaty, with the same force and virtue as if incorporated therein; it being understood that each of the contracting parties reserves to itself the right, at any time after the said period of eight years shall have expired, to terminate the same by giving one year's notice of such intention to the other party.

#### ARTICLE XVIII.

##### SUPPLIES FOR AMERICAN TROOPS PREVIOUS TO EVACUATION.

All supplies whatever, for troops of the United States in Mexico, arriving at ports in the occupation of such troops previous to the final evacuation thereof, although subsequently to the restoration of the custom-houses at such ports, shall be entirely exempt from duties and charges of any kind; the government of the United States hereby engaging and pledging its faith to establish, and vigilantly to enforce all possible guards for securing the revenue of Mexico, by preventing the importation, under cover of this stipulation, of any articles other than such, both in kind and quantity, as shall really be wanted for the use and consumption of the forces of the United States during the time they may remain in Mexico. To this end it shall be the duty of all officers *and agents of the United States to denounce to the Mexican authorities at the respective*

ports any attempts at a fraudulent abuse of this stipulation which they may know of or may have reason to suspect, and to give to such authorities all the aid in their power with regard thereto; and every such attempt, when duly proved and established by sentence of a competent tribunal, shall be punished by the confiscation of the property so attempted to be fraudulently introduced.

## ARTICLE XIX.

### RULES OF IMPORTATION INTO MEXICAN PORTS.

With respect to all merchandise, effects and property whatsoever, imported into ports of Mexico whilst in the occupation of the forces of the United States, whether by citizens of either republic, or by citizens or subjects of any neutral nation, the following rules shall be observed:

1. All such merchandise, effects and property, if imported previously to the restoration of the custom houses to the Mexican authorities, as stipulated for in the third article of this treaty, shall be exempt from confiscation, although the importation of the same be prohibited by the Mexican tariff.

2. The same perfect exemption shall be enjoyed by all such merchandise, effects and property, imported subsequently to the restoration of the custom houses, and previously to the sixty days fixed in the following article for the coming into force of the Mexican tariff at such ports respectively; the said merchandise, effects and property being, however, a

the time of their importation, subject to the payment of duties, as provided for in the said following article.

3. All merchandise, effects and property described in the two rules foregoing shall, during their continuance at the place of importation, and upon their leaving such place for the interior, be exempt from all duty, tax, or impost of every kind, under whatsoever title or denomination. Nor shall they be there subjected to any charge whatsoever upon the sale thereof.

4. All merchandise, effects and property described in the first and second rules, which shall have been removed to any place in the interior whilst such place was in the occupation of the forces of the United States, shall, during their continuance therein, be exempt from all tax upon the sale or consumption thereof, and from every kind of impost or contribution; under whatsoever title or denomination.

5. But if any merchandise, effects, or property described in the first and second rules, shall be removed to any place not occupied at the time by the forces of the United States, they shall, upon their introduction into such place, or upon their sale or consumption there, be subject to the same duties, which, under the Mexican laws, they would be required to pay in such cases if they had been imported in time of peace, through the maritime *custom houses*, and had there paid the *duties conformably with the Mexican tariff*.

6. The owners of all merchandise, effects, or property described in the first and second rules, and existing in any port of Mexico, shall have the right to reship the same, exempt from all tax, impost, or contribution whatever.

With respect to the metals, or other property, exported from any Mexican port whilst in the occupation of the forces of the United States, and previously to the restoration of the custom house of such port, no person shall be required by the Mexican authorities, whether general or state, to pay any tax, duty or contribution upon any such exportation, or in any manner to account for the same to the said authorities.

## ARTICLE XX.

CERTAIN PROPERTY TO BE ADMITTED TO ENTRY.

Through consideration for the interests of commerce generally, it is agreed, that if less than sixty days should elapse between the date of the signature of this treaty and the restoration of the custom houses conformably with the stipulation in the third article, in such case all merchandise, effects and property whatsoever, arriving at the Mexican ports after the restoration of the said custom houses, and previously to the expiration of sixty days after the day of the signature of this treaty, shall be admitted to entry; and no other duties shall be levied thereon than the duties established by the tariff found in force at such custom houses at the time of the

restoration of the same. And to all such merchandise, effects and property, the rules established by the preceding articles shall apply.

## ARTICLE XXI.

### FUTURE DISAGREEMENT—ARBITRATION.

If, unhappily, any disagreement should hereafter arise between the governments of the two republics, whether with respect to the interpretation of any stipulation in this treaty, or with respect to any other particular concerning the political or commercial relations of the two nations, the said governments, in the name of those nations, do promise to each other that they will endeavor, in the most sincere and earnest manner, to settle the differences so arising, and to preserve the state of peace and friendship in which the two countries are now placing themselves; using, for this end, mutual representations and pacific negotiations. And if, by these means, they should not be enabled to come to an agreement, a resort shall not, on this account, be had to reprisals, aggression, or hostility of any kind, by the one republic against the other, until the government of that which deems itself aggrieved shall have maturely considered, in the spirit of peace and good neighborhood, whether it would not be better that such difference should be settled by the arbitration of commissioners appointed on each *side*, or by that of a friendly nation. *And should such course be proposed by either*

party, it shall be acceded to by the other, unless deemed by it altogether incompatible with the nature of the difference, or the circumstances of the case.

## ARTICLE XXII.

### WAR—PRIVATE PROPERTY—RESPECT FOR CHURCHES, ETC. PRISONERS OF WAR.

If [which is not to be expected, and which God forbid!] war should unhappily break out between the two republics, they do now, with a view to such calamity, solemnly pledge themselves to each other and to the world, to observe the following rules, absolutely, where the nature of the subject permits, and as closely as possible in all cases where such absolute observance shall be impossible.

1. The merchants of either republic then residing in the other shall be allowed to remain twelve months [for those dwelling in the interior], and six months [for those dwelling at the seaports], to collect their debts and settle their affairs; during which periods they shall enjoy the same protection and be on the same footing, in all respects, as the citizens or subjects of the most friendly nations, and, at the expiration thereof, or at any time before, they shall have full liberty to depart, carrying off all their effects without molestation or hinderance; conforming therein to the same laws which the citizens or subjects of the most friendly nations are required to conform to. Upon the entrance of the armies of either nation into the territories of the other, women

and children, ecclesiastics, scholars of every faculty, cultivators of the earth, merchants, artisans, manufacturers and fishermen, unarmed and inhabiting unfortified towns, villages or places, and in general all persons whose occupations are for the common subsistence and benefit of mankind, shall be allowed to continue their respective employments unmolested in their persons. Nor shall their houses or goods be burned or otherwise destroyed, nor their cattle taken, nor their fields wasted by the armed force into whose power, by the events of war, they may happen to fall; but if the necessity arise to take anything from them for the use of such armed force, the same shall be paid for at an equitable price. All churches, hospitals, schools, colleges, libraries, and other establishments for charitable and beneficent purposes, shall be respected and all persons connected with the same protected in the discharge of their duties and the pursuit of their vocations.

2. In order that the fate of prisoners of war may be alleviated, all such practices as those of sending them into distant, inclement, or unwholesome districts, or crowding them into close or noxious places, shall be studiously avoided. They shall not be confined in dungeons, prison-ships, or prisons; nor be put in irons, or bound, or otherwise restrained in the use of their limbs. The officers shall enjoy liberty on their paroles, within convenient districts, and have comfortable quarters; and the common soldiers shall be disposed in



cantonments, open and extensive enough for air and exercise, and lodged in barracks as roomy and good as are provided by the party in whose power they are, for its own troops. But if any officer shall break his parole by leaving the district so assigned him, or any other prisoner shall escape from the limits of his cantonment, after they shall have been designated to him, such individual, officer, or other prisoner shall forfeit so much of the benefit of this article as provides for his liberty on parole or in cantonment. And if any officer so breaking his parole, or any common soldier so escaping from the limits assigned him, shall afterwards be found in arms, previously to his being regularly exchanged, the person so offending shall be dealt with according to the established laws of war. The officers shall be daily furnished by the party in whose power they are, with as many rations, and of the same articles, as are allowed, either in kind or by commutation, to officers of equal rank in its own army; and all others shall be daily furnished with such ration as is allowed to a common soldier in its own service; the value of all which supplies shall, at the close of the war, or at periods to be agreed upon between the respective commanders, be paid by the other party on a mutual adjustment of accounts for the subsistence of prisoners; and such accounts shall not be mingled with or set off against any others, nor the balance due on them be withheld, as a compensation or reprisal for any cause whatever, real or

pretended. Each party shall be allowed to keep a commissary of prisoners, appointed by itself, with every cantonment of prisoners, in possession of the other; which commissary shall see the prisoners as often as he pleases; shall be allowed to receive, exempt from all duties or taxes, and to distribute whatever comforts may be sent to them by their friends; and shall be free to transmit his reports in open letters to the party by whom he is employed.

And it is declared that neither the pretense that war dissolves all treaties, nor any other whatever, shall be considered as annulling or suspending the solemn covenant contained in this article. On the contrary, the state of war is precisely that for which it is provided; and during which its stipulations are to be as sacredly observed as the most acknowledged obligations under the law of nature or nations.

### ARTICLE XXIII.

#### RATIFICATION OF TREATY.

This treaty shall be ratified by the president of the United States of America, by and with the advice and consent of the senate thereof; and by the president of the Mexican republic, with the previous approbation of its general congress; and the ratifications shall be exchanged in the city of Washington, or at the seat of government of Mexico, in four months from the *date of the signature hereof, or sooner if practicable.*

In faith whereof, we, the respective plenipotentiaries, have signed this treaty of peace, friendship, limits and settlement; and have hereunto affixed our seals respectively. Done in quintuplicate, at the city of Guadalupe Hidalgo, on the second day of February, in the year of our Lord one thousand eight hundred and forty-eight.

N. P. TRIST. [L. s.]

LUIS G. CUEVAS. [L. s.]

BERNARDO COUTO. [L. s.]

MIGL. ATRISTAN. [L. s.]

And whereas, the said treaty, as amended, has been duly ratified on both parts, and the respective ratifications of the same were exchanged at Queretaro on the thirtieth day of May last, by Ambrose H. Sevier and Nathan Clifford, commissioners on the part of the government of the United States, and by Senor Don Luis de la Rosa, minister of relations of the Mexican republic, on the part of that government;

Now, therefore, be it known, that I, James K. Polk, president of the United States of America, have caused the said treaty to be made public, to the end that the same and every clause and article thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this fourth day of July, one thousand eight hundred and forty-eight, and of the independence of the United States the seventy-third.

JAMES K. POLK.

By the President:

JAMES BUCHANAN, Secretary of State.

**ARTICLES REFERRED TO**  
**IN THE**  
**Fifteenth Article of the Preceding Treaty.**

---

**FIRST AND FIFTH ARTICLES OF THE UN-  
RATIFIED CONVENTION BETWEEN THE  
UNITED STATES AND THE MEXI-  
CAN REPUBLIC, OF THE TWEN-  
TIETH OF NOVEMBER, 1843.**

---

**ARTICLE I.**

**COMMISSIONERS OF CLAIMS.**

All claims of citizens of the Mexican republic against the government of the United States, which shall be presented in the manner and time hereinafter expressed, and all claims of citizens of the United States against the government of the Mexican republic, which for whatever cause were not submitted to nor considered nor finally decided by the commission nor by the arbiter appointed by the convention of eighteen hundred and thirty-nine, and which shall be presented in the manner and time hereinafter specified, shall be referred to four commissioners, who shall form a board, and shall be appointed in the following manner, that is to say: Two

commissioners shall be appointed by the president of the Mexican republic, and the other two by the president of the United States, with the approbation and consent of the senate. The said commissioners thus appointed shall, in the presence of each other, take an oath to examine and decide impartially the claims submitted to them, and which may lawfully be considered, according to the proofs which shall be presented, the principles of right and justice, the law of nations and the treaties between the two republics.

#### ARTICLE V.

##### UMPIRE.

All claims of citizens of the United States against the government of the Mexican republic, which were considered by the commissioners and referred to the umpire appointed under the convention of the eleventh of April, eighteen hundred and thirty-nine, and which were decided by him, shall be referred to and decided by the umpire to be appointed, as provided by this convention, on the points submitted to the umpire under the late convention, and his decision shall be final and conclusive. It is also agreed that if the respective commissioners shall deem it expedient they may submit to the said arbiter new arguments upon the said claims.

## Members of Constitutional Convention of 1849

J. D. Hoppe.....	San Jose
Joseph Aram.....	San Jose
Elam Brown.....	San Jose
Jacob R. Snyder.....	Sacramento
Winfield S. Sherwood.....	Sacramento
H. W. Halleck.....	Monterey
L. W. Hastings.....	Sacramento
J. A. Sutter.....	Sacramento
John McDougal.....	Sacramento
E. O. Crosby.....	Sacramento
M. M. McCarver.....	Sacramento
Julian Hanks.....	San Jose
Kimball H. Dimmick.....	San Jose
Thomas O. Larkin.....	Monterey
Lewis Dent.....	Monterey
Rodman M. Price.....	San Francisco
Ch. T. Botts.....	Monterey
M. G. Vallejo.....	Sonoma
Manl. Dominguez.....	Angeles
Antonio M. Pico.....	Pueblo de San Jose
Jacinto Rodriguez.....	Monterey
Henry A. Tefft.....	San Luis Obispo
Pedro Sansevaine.....	San Jose
Hugo Reid.....	Angeles
Stephen C. Foster.....	Angeles
J. McH. Hollingsworth.....	San Joaquin
Joseph Hobson.....	San Francisco
Pacificus Ord.....	Monterey
O. M. Wozencraft.....	San Joaquin
J. P. Walker.....	Sonoma
W. E. Shannon.....	Sacramento
Abel Stearns.....	Angeles
Thomas L. Vermeule.....	San Joaquin

Benj. S. Lippincott.....	San Joaquin
Myron Norton.....	San Francisco
W. M. Steuart.....	San Francisco
B. F. Moore.....	San Joaquin
A. J. Ellis.....	San Francisco
Edw. Gilbert.....	San Joaquin
J. M. Jones.....	San Joaquin
W. M. Gwin.....	San Francisco
Jose Anto. Carillo.....	Angeles
Francis J. Lippitt.....	San Francisco
Henry Hill.....	San Diego
Miguel de Pedrarena.....	San Diego
R. Semple.....	Sonoma
P. N. de la Guerra.....	Santa Barbara
J. M. Covarrubias.....	San Luis Obispo

## Members of Constitutional Convention of 1879.

Andrews, A. R.....	Trinity and Shasta
Ayers, James J.....	Fourth Congressional District
Barbour, Clitus.....	San Francisco
Barnes, Wm. H. L.....	First Congressional District
Barry, Edward.....	Nevada and Sierra
Barton, Jas. N.....	Mendocino, Humboldt and Del Norte
Beerstecher, Chas. J.....	San Francisco
Belcher, Isaac S.....	Third Congressional District
Bell, Peter.....	San Francisco
Berry, J.....	Siskiyou and Modoc
Biggs, Marion.....	Third Congressional District
Blackmer, Eli T.....	San Diego
Boggs, H. C.....	Napa, Lake and Sonoma
Boucher, Josiah.....	Butte
Brown, Joseph C.....	Tulare
Burt, Samuel B.....	Placer
Campbell, A. Jr.....	Alameda
Caples, James.....	Sacramento
Casserly, Eugene.....	First Congressional District
Chapman, Augustus H.....	Plumas, Lassen and Butte
Charles, J. M.....	Sonoma
Condon, John D.....	San Francisco



Cowden, D. H.	Yuba
Cross, O. W.	Nevada
Crouch, Robert.	Napa
Davis, Hamlet.	Nevada
Dean, J. E.	El Dorado and Alpine
Dowling, Patrick T.	San Francisco
Doyle, Luke.	San Francisco
Dudley, James M.	Solano
Dudley, W. L.	San Joaquin and Amador
Dunlap, Presley.	Sacramento
Eagon, John A.	Amador
Edgerton, Henry.	Sacramento
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Fawcett, Eugene.	Santa Barbara
Filcher, J. A.	Placer
Finney, Ohas. G.	Ventura
Freeman, Abraham C.	Sacramento
Freud, Jacob R.	San Francisco
Garvey, J. B.	Calaveras
Glasscock, B. B.	Colusa
Gorman, Joseph C.	San Francisco
Grace, William P.	San Francisco
Graves, William J.	Fourth Congressional District
Gregg, V. A.	Kern
Hager, John S.	First Congressional District
Haight, H. H.	Second Congressional District
Hale, James E.	Second Congressional District
Hall, J. B.	Second Congressional District
Hardwick, G. M.	Mariposa and Merced
Harrison, Thomas.	San Francisco
Harvey, Joel A.	Solano
Heiskell, Tyler D.	Stanislaus
Herold, Conrad.	San Francisco
Herrington, Dennis W.	Santa Clara
Hilborn, S. G.	Solano
Hitchcock, John R. W.	San Joaquin
Hoge, Joseph P.	First Congressional District
Holmes, Samuel A.	Fresno
Howard, Volney E.	Los Angeles

Howard, W. J.	Mariposa and Merced
Huestis, W. F.	Third Congressional District
Hughey, Wm. P.	San Francisco
Hunter, G. W.	El Dorado and Alpine
Inman, Daniel	Alameda
Johnson, G. A.	Sonoma
Jones, L. F.	Mariposa, Merced and Stanislaus
Joyce, Peter J.	San Francisco
Kelley, John M.	Third Congressional District
Kenny, Bernard F.	San Francisco
Kenny, John J.	San Francisco
Keyes, James H.	Yuba and Sutter
Kleine, Charles R.	San Francisco
Laine, Thomas H.	Santa Clara
Lampson, R. M.	Tuolumne and Calaveras
Larkin, Henry	El Dorado
Larue, Hugh M.	Sacramento
Lavigne, Raymond	San Francisco
Lewis, David	San Joaquin
Lindow, John F.	San Francisco
Mansfield, John	Fourth Congressional District
Martin, Edward	Fourth Congressional District
Martin, J. W.	Second Congressional District
McCallum, John G.	Alameda
McComas, Rush	Santa Clara
McConnell, Thomas	Sacramento
McCoy, John	Nevada
McFarland, Thomas B.	Sacramento
McNutt, John F.	Yuba
Miller, John F.	First Congressional District
Mills, Hiram	Contra Costa
Moffat, Wm. S.	San Mateo
Moreland, W. W.	Sonoma
Morris, Thomas	San Francisco
Morse, Lucius D.	San Francisco and San Mateo
Murphy, James E.	Del Norte
Nason, Edmund	San Benito
Nelson, Thorwald	San Francisco
Neunaber, Henry	San Francisco
Noel, Alonzo E.	Lake
O'Donnell, Charles C.	San Francisco
Ohleyer, George	Sutter

O'Sullivan, James.....San Francisco  
 Overton, A. P.....Third Congressional District  
 Porter, J. M.....Second Congressional District  
 Prouty, Wm. H.....Amador  
 Pulliam, Mark R. O.....Butte  
 Reddy, Patrick.....Mono and Inyo  
 Reed, Charles F.....Solano and Yolo  
 Reynolds, James S.....San Francisco  
 Rhodes, John M.....Yolo  
 Ringold, Charles S.....San Francisco  
 Rolfe, Horace C.....San Diego and San Bernardino  
 Schell, George W.....Fourth Congressional District  
 Schomp, Justus.....San Joaquin  
 Shafter, James McM.....Third Congressional District  
 Shoemaker, Rufus.....Second Congressional District  
 Shurtleff, Benjamin.....Third Congressional District  
 Smith, E. O.....Santa Clara  
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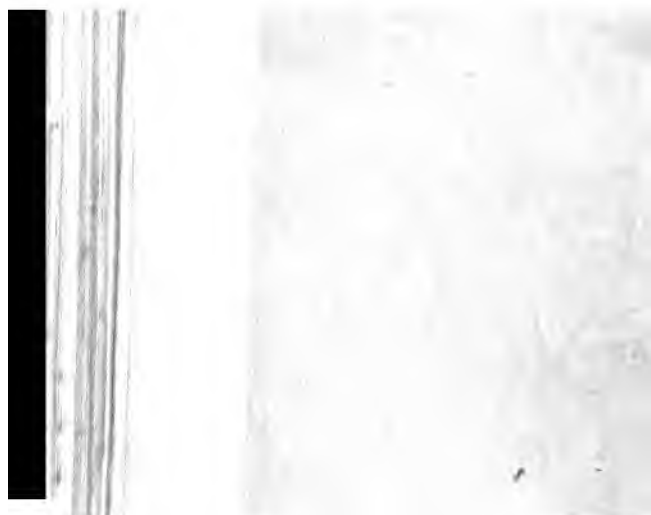
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